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Canada, Parliament, Senate,
Standing Committee
on Banking and Commerce
Proceedings · 1967-68 No. 1-27



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Second Session—Twenty-seventh Parliament

1967 - 68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 1 - 29

Complete Proceedings on Bill S-8,
intituled:

"An Act respecting The Excelsior Life Insurance Company".

WEDNESDAY, JUNE 7th, 1967

WITNESSES:

Department of Insurance: R. R. Humphrys, Superintendent.

Excelsior Life Insurance Company: M. K. Kenny, President; J. Fraser
Fell, Q.C., Counsel.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Flynn	Molson
Aseltine	Gélinas	O'Leary (<i>Carleton</i>)
Baird	Gershaw	Paterson
Beaubien (<i>Bedford</i>)	Gouin	Pearson
Beaubien (<i>Provencher</i>)	Haig	Pouliot
Benidickson	Hayden	Power
Blois	Irvine	Rattenbury
Bourget	Isnor	Reid
Burchill	Kinley	Roebuck
Choquette	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Cook	Leonard	Thorvaldson
Croll	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Dessureault	Macdonald (<i>Brantford</i>)	Vien
Everett	MacKenzie	Walker
Farris	Macnaughton	White
Fergusson	McCutcheon	Willis—(49)
	McDonald	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)



ORDER OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Tuesday, June 6th, 1967

"Pursuant to the Order of the Day, the Honourable Senator Leonard moved, seconded by the Honourable Senator MacKenzie, that the Bill S-8, intituled: "An Act respecting The Excelsior Life Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator MacKenzie, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

"With leave of the Senate,

The Honourable Senator Leonard moved, seconded by the Honourable Senator MacKenzie:

That Rule 119 be suspended with respect to the Bill S-8, intituled: "An Act respecting The Excelsior Life Insurance Company".

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 7th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-8, intituled: "An Act respecting The Excelsior Life Insurance Company", has in obedience to the order of reference of June 6th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 7th, 1967.

(1)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Cook, Croll, Gouin, Irvine, Leonard and Macnaughton. (9)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-8.

Bill S-8, "An Act respecting The Excelsior Life Insurance Company", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

Excelsior Life Insurance Company:

M. K. Kenny, President.

J. Fraser Fell, Q.C., Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report the said Bill without amendment.

At 9.45 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 7, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-8, respecting The Excelsior Life Insurance Company, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators, we have before us for consideration this morning two bills. We will proceed first with Bill S-8, respecting The Excelsior Life Insurance Company. As this bill is originating in the Senate, I think the proceedings on it should be reported. May I have the usual motion for the reporting and printing of the proceedings?

The Committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: Honourable senators, we have as witnesses Mr. M. K. Kenny, President of The Excelsior Life Insurance Company, and Mr. Fraser M. Fell, Q.C., Counsel. We also have Mr. R. R. Humphrys, Superintendent of Insurance. Our usual practice is to hear Mr. Humphrys first. Unless there are any objections to that, I shall call him.

Hon. Senators: Agreed.

Mr. R. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, this bill is identical with the bill which was before this committee in the last session.

The purpose is to convert The Excelsior Life Insurance Company from the status of a company with provincial incorporation to the status of a company with federal incorporation. As such, the purpose of the bill is exactly

the same as that of many bills which have been before this committee in recent years to change provincial companies to federal companies.

The main difference here is that the bill proposes a somewhat different procedure from that which has been traditional. Honourable senators will recall that the usual practice in cases such as this is to incorporate a new company by special act and empower that company to take over the assets and the liabilities of the provincial company by agreement. That system works very well in small companies and we have used it very often. This case, however, is somewhat different, since Excelsior is a well-established company with a large volume of business in force and a large volume of assets. The traditional method that we have used, involving a transfer from one corporate entity to another, would require a transfer of assets with the expense and difficulty of re-registering mortgages and securities and also involving the problem of transferring the contractual liabilities of the many thousands of policies outstanding, from one corporate entity to another.

Therefore, this bill proposes a different procedure, one whereby Parliament would declare that the company is continued as a corporation in the same sense as if it had been a corporation incorporated by special Act of Parliament; it would be clothed with all the powers of a federal company and subject to all the restrictions and obligations.

This proposal, as we explained last year, is accompanied by a special act in the Legislature of Ontario, authorizing the company to petition Parliament for the enactment of this legislation. The Ontario act states that if Parliament passes this bill, the company will cease to be subject to the Ontario Corporations Act and will in all respects be in the same position, having the same powers, and so on, and the same liabilities, as a federally incorporated company.

The Excelsior Life itself is a very old company. It was incorporated in 1889. Although it is a provincial company, it has been registered under the Canadian and British Insurance Companies Act and predecessor acts since 1897; so we are thoroughly familiar with it. Our department has supervised it since before the turn of the century. The company is in a sound and strong financial position and we have no worries about its state of affairs.

The major share interest in the company is owned by a United States life insurance company, the Aetna Life Insurance Company. The major interest of about 70 per cent was acquired in 1960. However, the management of the company remains Canadian. The majority of the directors are required to be Canadian and, in fact, nine of the 12 directors are Canadian citizens resident in Canada.

The bill was considered by the committee last year and was passed; it was passed by the Senate and received second reading in the House of Commons and was passed by the Committee on Finance Trade and Economic Affairs in the House of Commons. However, third reading was not accomplished at the time the last session closed. That explains the reintroduction of the bill.

Mr. Chairman, that is all I have to say.

The Chairman: Are there any questions? Mr. Kenny, is there anything you would like to add?

Mr. M. K. Kenny, President, Excelsior Life Insurance Company: I do not think I have anything to add, sir, unless honourable members of the Senate would care to ask any questions.

The Chairman: Well, this is our second run at it, so we have pretty well exhausted the questions.

Mr. Kenny: Yes, I do think the subject has been exhausted.

The Chairman: Mr. Fell, do you have anything to add?

Mr. Fraser M. Fell, O.C., Counsel, the Excelsior Life Insurance Company: No, sir.

The Chairman: Fine. There being no questions, are you ready for the question? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Committee proceeded to the next order of business.



Second Session—Twenty-seventh Parliament
1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 2

Complete Proceedings on Bill S-9,
intituled:
"An Act respecting The Empire Life Insurance Company".

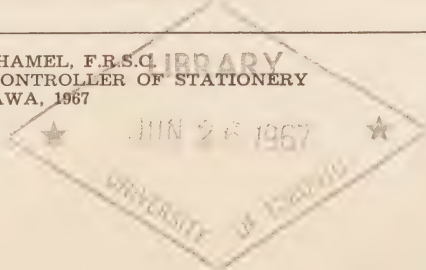
WEDNESDAY, JUNE 7th, 1967

WITNESSES:

Department of Insurance: R. R. Humphrys, Superintendent.
The Empire Life Insurance Company: Herbert Blakeman, President;
Hal Jackman, Vice-President.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.B.S.C. LIBRARY
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967



THE STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(49)
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Tuesday, June 6th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Leonard moved, seconded by the Honourable Senator MacKenzie, that the Bill S-9, intituled: "An Act respecting the Empire Life Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator MacKenzie, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

"With leave of the Senate,

The Honourable Senator Leonard moved, seconded by the Honourable Senator MacKenzie:

That Rule 119 be suspended with respect to the Bill S-9, intituled: "An Act respecting the Empire Life Insurance Company".

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 7th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-9, intituled: "An Act respecting The Empire Life Insurance Company" has in obedience to the order of reference of June 6th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 7th, 1967.

(2)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.45 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Cook, Croll, Gouin, Irvine, Leonard and Macnaughton. (9)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-9.

Bill S-9, "An Act respecting The Empire Life Insurance Company", Was read and considered.

The following witnesses were heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

Empire Life Insurance Company:

Herbert Blakeman, President.

Hal Jackman, Vice-President.

On Motion of the Honourable Senator Leonard it was *Resolved* to report the said Bill without amendment.

At 10.00 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 7, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-9, respecting The Empire Life Insurance Company, met this day at 9.45 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: We have before us now, Bill S-9, which is an act respecting The Empire Life Insurance Company.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: In connection with this bill, we have before us Mr. Herbert Blakeman, the President, Mr. Hal Jackman, Vice-President, and Mr. J. Ross Tolmie, Parliamentary Agent. I think we will follow our usual practice and call first upon the Superintendent of Insurance, Mr. Humphrys.

Mr. R. R. Humphrys, Superintendent of Insurance: Mr. Chairman, the purpose and structure are the same for this bill as for the one we have just considered respecting the Excelsior Life Insurance Company. The Empire Life Insurance Company is a life insurance company incorporated under the laws of Ontario. It was incorporated in 1923 and has grown and developed since into a well-established, financially strong life insurance company that is doing business in most provinces of Canada.

Its purpose, as I say, is the same as that of the Excelsior bill: to change the company from a provincial corporation into a federal corporation. The procedure proposed is the same as that for the Excelsior. Again, the Ontario Legislature has passed a special act

authorizing the company to take this course and stating that, if Parliament approves this bill, the Corporations Act of Ontario would no longer apply and the company would therefore be a federal company.

The main difference is that The Empire Life Insurance Company is not registered under the acts that our department administers. It has operated through the years under the supervision of the Department of Insurance in Ontario.

We have, however, over the years had some contact with the company. We have known some of the officers and, more recently, when this proposal was coming forth we made careful studies of the financial statements of the company, and examiners on our staff have called at the company's head office and made some preliminary examinations of the company's records and affairs.

As a consequence, we are satisfied that the financial position of the company is sound and that it is well and efficiently managed. We have no concern about the safety of the policyholders and the general financial strength of the company. Although the company is young as life insurance companies go, it has developed well. It has over \$600 million of life insurance in force; its assets are about \$70 million and are generally of good quality. About 50 per cent of the assets are in mortgages, all of which seem to be sound.

We have no criticism of the company's financial affairs or its financial position. The company is Canadian-owned. According to my information, there is no single shareholder having a controlling interest. The principal shareholders are the Dominion and Anglo Investment Corporation Ltd., the Debentures and Investment Corporation of Canada Ltd., and the Canadian and Foreign Securities Company Ltd. These are investment companies. For further detail as to the ownership of those companies, I would refer the committee to the representatives of The Empire Insurance Company who are here, if the com-

mittee wishes any further information on that.

The rest of the shares, as I understand it, are very widely held, but with only about 3 per cent held outside Canada.

Mr. Chairman, I have no other comments.

The Chairman: Mr. Humphrys, I notice that there is no minimum paid-up capital required. Are you assuming that by virtue of this bill the old company continues and that whatever was there remains there?

Mr. Humphrys: Yes. The company continues without change and the authorized capital is specified in this act. The company, the minute it is continued as a federal corporation, will continue in exactly the same state as it is in now. Its paid capital is \$704,000. Its surplus funds are \$4,400,000, and in addition it has a reserve of \$1 million for investments and contingencies.

The Chairman: Are there any questions?

Senator Croll: I have one question aside from the bill. Mr. Humphrys, as we give you these further matters to come under your department, are you sufficiently staffed to handle them?

Mr. Humphrys: The Chief Examiner of the department is in the room today, so perhaps I had better be careful in what I say. He may have a different view than I of the adequacy of our staff. But I must say that in the last year or two the pace of events in the financial world has put a good deal more pressure on the department and the staff of the department than had been the case in years gone by. So we have had to increase our staff. We have been able to put more staff on, and I

believe that while we have to do still more in that direction, we are making adequate steps to develop a staff which will enable us to meet our responsibilities. I cannot say that we have had any difficulties in that regard, senator.

The Chairman: Are there any other questions you want to ask Mr. Humphrys? Now, we have Mr. Blakeman, who is the President and Mr. Jackman, the Vice-President; do either of these gentlemen wish to add anything to the excellent presentation we have had?

Mr. Herbert Blakeman, President, The Empire Life Insurance Company: Mr. Chairman, honourable senators, I believe the Superintendent has given you the pertinent information, the essential information concerning the company. There is nothing that I think should be added; however, we would gladly answer any questions which may come from honourable senators.

Senator Croll: A question arises in my mind. I think I know the answer, but I am asking it because I know Mr. Jackman pretty well. Are the large companies to which Mr. Humphrys referred Canadian-owned companies?

Mr. Hal Jackman, Vice-President, The Empire Life Insurance Company: Yes, they are, senator. They are Canadian-owned.

The Chairman: Mr. Tolmie, the Parliamentary Agent, indicates that he has nothing to add. Are you ready for the question? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 3

Complete Proceedings on Bill S-13,
intituled:

"An Act to incorporate Farmers Central Mutual Insurance Company"

WEDNESDAY, JUNE 14th, 1967

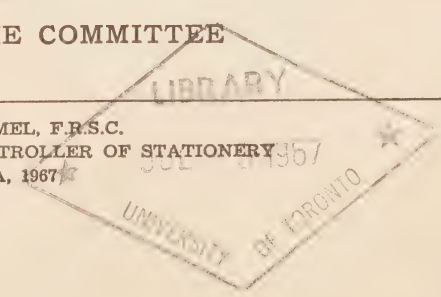
WITNESSES:

Department of Insurance: R. R. Humphrys, Superintendent.

Farmers Central Mutual Insurance Company: W. F. Shoemaker, Manager;
W. J. McGibbon, Q.C., Counsel.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967



THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(49)
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Thursday, June 8th, 1967

"Pursuant to the Order of the Day, the Honourable Senator Walker, P.C., moved, seconded by the Honourable Senator Pearson, that the Bill S-13, Intituled: "An Act to incorporate Farmers Central Mutual Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Walker, P.C., moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 14th, 1967.

(3)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

In the absence of the Chairman, and on Motion of the Honourable Senator Haig, the Honourable Senator Leonard was elected *Acting Chairman*.

Present: The Honourable Senators Leonard (Acting Chairman), Cook, Croll, Fergusson, Gouin, Haig, Irvine, Isnor, Kinley, Molson, Pearson, Rattenbury and Walker. (13)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-13.

Bill S-13, "An Act to incorporate Farmers Central Mutual Insurance Company", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

Farmers Central Mutual Insurance Company:

W. F. Shoemaker, Manager.

W. J. McGibbon, Q.C., Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report the said Bill without amendment.

At 10.05 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 14th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-13, intituled: "An Act to incorporate Farmers Central Mutual Insurance Company", has in obedience to the order of reference of June 8th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 14, 1967

The Standing Committee on Banking and Commerce, to which was referred Bill S-13, to incorporate Farmers Central Mutual Insurance Company, met this day at 9.30 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard, Acting Chairman, in the Chair.

The Acting Chairman: We have two items of business before us today, Bill S-12 an act to incorporate Western Farmers Mutual Insurance Company, and Bill S-13 an act to incorporate Farmers Central Mutual Insurance Company. Both these bills were explained by Senator Walker on second reading last week.

The committee agreed that a verbatim report be made of the committee's proceedings on the said bill S-13.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the said bill S-13.

I understand it is the wish of counsel for these applicants that Bill S-13 be proceeded with first. Mr. McGibbon is here as counsel on both bills.

We have before us as witnesses Mr. W. J. McGibbon, Mr. W. F. Shoemaker, Manager, Farmers Central Mutual Insurance Co. and Mr. R. R. Humphrys, Superintendent, Department of Insurance. Shall we follow the usual practice of having Mr. Humphrys address us first?

Hon. Senators: Agreed.

The Acting Chairman: Mr. Hopkins, our counsel, has certified both these bills as being in proper legal form. I would add that Mr. Humphrys has with him Mr. D. E. Patterson, Chief, Registration and Deposit Branch.

Mr. R. R. Humphrys, Superintendent, Department of Insurance: Honourable senators, the purpose of this bill is to incorporate as a federal company a company that will be empowered to do all classes of insurance other than life. The company will be a mutual company, that is one that is owned by its policyholders rather than being a company that has capital stockholders and shareholders. The purpose for incorporating the company is to transfer an existing provincially incorporated company from provincial status to federal status. The provincial company now existing is Farmers Central Mutual Insurance Co., a very old company, incorporated in 1894 under the laws of Ontario, and one which has been doing a fire insurance business amongst farmers in Ontario. The company at present is under provisions of Ontario legislation which covers the activities of farm mutuals. These provisions are restrictive and enable the company to transact fire insurance, and that is the only class, except windstorm in a very limited fashion.

The company now has reached the stage of its development where it would like to branch out and do insurance in a number of other classes. It feels it is necessary to offer this service to its policyholders to compete with other companies that are in the general insurance business; and, as a consequence, it would like to be in a position to offer a broader range of insurance to its customers, including liability insurance and a number of miscellaneous classes that customarily go with fire business.

We feel that the existing company, while not a large company as insurance companies go, is in a strong financial position. It has assets of about \$1½ million and a surplus of nearly \$1 million. The premium income last year was about \$1 million.

This bill follows the same pattern that has been before Parliament in a number of other cases in past years for the same purpose, which is effect to reincorporate a provincial

farm mutual company as a federal mutual fire and casualty insurance company.

The incorporators, the provisional directors, are all directors of the existing Ontario company. The company is empowered to do all classes of insurance, other than life insurance. The bill provides that the company is not to get into business until applications have been received for at least \$2 million of insurance or, in lieu thereof, that an agreement has been signed between the federal company and the provincial company. It is expected this latter course will be followed. If incorporation is enacted by Parliament, this company will enter into an agreement with the existing provincial company whereby all the assets and liabilities of members of the provincial company are transferred to the federal company, and the provincial company will disappear. That is a pattern I am sure will be familiar to honourable senators, since we have had many similar cases before Parliament.

There are a number of provisions in here that are not found in the model bill attached to the general insurance act. The reason for this is that this company, being a mutual company, is owned by its mutual policy holders. They are policyholders who enter into insurance contracts and, instead of paying the whole premium in cash, they sign a premium note under which they oblige themselves to pay a certain amount on call from the company. The usual practice is to sign a note for 2 per cent—I think that is correct—of the face amount of the insurance. The company makes a call and the policyholder pays a certain proportion of that, but remains liable for the balance of the note, should the company need the extra funds in the case of an emergency. I believe I am correct in saying that in the history of the company it has not been necessary to make an assessment against that uncalled portion.

This is the essence of the mutual system as referred to in this bill. It is the policyholders who sign premium notes and are liable to assessment up to the amount of the notes should the funds be needed.

There are some further provisions dealing with voting powers of the mutual policyholders, the rights of the directors to vary the number of directors to be elected for one meeting to another. These provisions, again, follow the pattern that was used in bills to incorporate other farm mutuals a number of years ago, of which I think we have four now.

Mr. Chairman, those are the only comments I have to make.

Senator Croll: Mr. Humphrys, there is one thing I did not quite follow. How do they pay their premium? Do they pay their premium in the ordinary way, or just pay 2 per cent of the premium and are liable for the balance?

Mr. Humphrys: They would sign a premium note.

Senator Croll: For the total amount of the premium?

Mr. Humphrys: Yes, for the total amount of the premium, but they would only pay part of it. That part would be determined by the company. The company would say, "You have signed a premium note for so much. We expect you to pay 25 or 30 per cent of that in cash," so the policyholder would pay that in cash, and if nothing more were needed by the company he would not pay any more. But if the company experienced heavy claims and its other funds were not sufficient to meet its obligations, it would come back to that policyholder and say, "We want you to pay the balance on the note."

This is the system that has been used through the years in the mutual fire and casualty business, particularly farm mutuals, and signing this note gives a contingent asset that the company can fall back on if it needs it. In the case of this company its financial position is strong, and they have set their premiums at a level and have governed their underwriting in such a way that they have not found it necessary to go back and assess the policyholders beyond the initial amount paid when the policy note was signed.

Senator Haig: Who determines the amount to be paid in cash?

Mr. Humphrys: The directors of the company would determine the amount to be paid in cash.

Senator Molson: Will those premiums be separated as to class or type of risk, such as fire, casualty, and so on?

Mr. Humphrys: This company, in its present form, is limited to fire insurance and a very small amount of windstorm. Under the new powers, where it would be able to enter into a number of different classes of insurance, they would have to set up premiums structures that take into account the class of insurance involved and the type of risk.

Senator Molson: I am wondering, on the call made on the premium note, would this be confined to the class of insurance generally?

Mr. Humphrys: I would ask Mr. Shoemaker to comment on that, but as matters stand there is only one class they have had to deal with. When they get into the broader range of insurance, if they are doing these other classes on the premium note basis they will have to make a judgment whether they can meet their needs from the particular class which has given rise to that experience, or whether they must fall back on all their policyholders; and I think they would have the right to fall back on all their policyholders because it is a mutual company and not a mutual class. I think that the policyholder, in signing the note, stands behind the company as a whole, if the emergency should go that far.

Other farm mutuals that have been reincorporated in this way and are under federal legislation have done a considerable volume of business. In some cases, most of their business has been on the cash premium system rather than the premium note system, where they are really operating in just the same way as any other fire and casualty company. So, its policyholders would take out a contract on the basis of a cash premium and pay the full premium, and they would not be obliged to pay anything more. So, the company might have two classes of policyholder as it grows: one being the mutual policyholders who control the company and have the votes and are obliged to come through if the company needs more money; and the other class, where it is purely a contractual insurance policy with a definite premium, and that is all.

Senator Rattenbury: The call on these notes is for the term of the policy?

Mr. Humphrys: Yes.

Senator Kinley: Will this company be subject to corporation taxes?

Mr. Humphrys: Yes.

Senator Kinley: I remember a statute was passed when I was in the House of Commons, and I think Mr. Dunning was the Minister of Finance, that especially directed that these insurance companies should not pay taxes, and went further to say that the directors were appointed by the farmers' organizations. Do you remember that statute?

Mr. Humphrys: I do not remember that, senator.

Senator Kinley: I was in the house and I opposed it because we thought it was taking away the virtue of directors in that they were not independent.

Mr. Humphrys: In this company the directors are elected by the mutual policyholders.

Senator Kinley: They have got to get the policyholders before they get directors.

Mr. Humphrys: That is correct.

Senator Kinley: And in that case the incorporators have the company until they get the policyholders?

Mr. Humphrys: That is right.

Senator Kinley: They are going to get a note for the premium, and they will not collect on the note?

Mr. Humphrys: They will collect part of the note.

Senator Kinley: What is the effect of that?

Mr. Humphrys: It gives them additional financial strength because the mutual policyholders have obliged themselves to pay more if it should be needed.

Senator Isnor: Not more, but just the balance.

Senator Kinley: But a fire insurance company is supposed to have capital enough to look after the hazards.

Mr. Humphrys: This is the basis upon which these mutual companies were formed. They were originally formed without capital, and in lieu of the capital they had this undertaking from their mutual policyholders to put up more money should the portion of the note paid in cash not be sufficient.

Senator Kinley: Suppose the policyholders will not put up the money?

Mr. Humphrys: The company is in a position to sue the policyholders for it.

Senator Walker: It is a promissory note.

The Acting Chairman: This company has operated for over 70 years.

Senator Kinley: I quite understand that, but they are entering into the credit business—buy today and pay tomorrow. I think this is

something that destroys the stability of the insurance business in this country.

Mr. Humphrys: I feel that any problem of this type that the company may have encountered is something of the past, senator, because the company has now had some 70 years of experience, and it has never had to...

Senator Kinley: Why do you want to change the present basis? What is the advantage of this?

Mr. Humphrys: They are seeking federal incorporation with exactly the same structure as the company has in its present state. They are not changing the ownership.

Senator Kinley: What about the tax benefits?

Mr. Humphrys: Perhaps I should modify my comment there. I said that the company would be subject to tax. Now, mutual fire and casualty companies are subject to income tax, but I would want to modify that because I think there is an exemption that applies in cases of where more than half the business comes from the insurance of farm property. In this case, as long as more than half of the company's premium income arises from the insurance of farm property it would not pay tax.

Senator Isnor: Is that for a three-year period, or for the entire life of the company?

Mr. Humphrys: The tax exemption, senator?

Senator Isnor: Yes.

Mr. Humphrys: I think there is no time limit on it. As long as more than half the premium income arises from the insurance of farm property the company does not pay tax.

Senator Croll: I am notoriously not a farmer. Could I be refused a policy by these people?

Mr. Humphrys: This act does not restrict the company to the insurance of farms. I think it would be their intention to do some business in the towns and villages. They do not plan to go into the insurance of commercial properities, but I think in respect of insurance on dwellings, and insurance of that type, they would want to expand into the towns and villages.

Senator Croll: Mr. Humphrys, how do you interpret section 5(2)? What does it mean with these limitations?

Mr. Humphrys: Our general requirement of fire and casualty insurance companies is to set the amount of capital and surplus that the company needs in accordance with the classes of insurance that the company wants to undertake. So, the pattern here, and the pattern to be followed in other cases, is to ask the company what classes of insurance it wants to engage in from the outset. When they have determined that we then indicate how much capital they must have, and that is dealt with in subsection 1 of section 5. Then we put in subsection 2 which specifies the additional capital and surplus they must have for each additional class they want. This is a way of ensuring that the company has adequate reserves by way of a margin of excess of assets over liabilities in order to protect the policy holders.

Senator Croll: I think a question was asked in the house by Senator Pearson as to what relationship there was between the company in Bill S-12 and this company. Is there any?

Mr. Humphrys: To my knowledge there is no relationship between these two companies. I will ask Mr. McGibbon to confirm that.

Mr. W. J. McGibbon, Q.C., Counsel, Farmers Central Mutual Insurance Company: There is no direct relationship between them. I know that the Western Farmers Mutual Insurance Company writes windstorm insurance, and sometimes this company that we are speaking about does get coverage from the other company. But, other than that, there is no direct connection between them.

Senator Molson: Mr. Chairman, in connection with the cash premium business I do not think I realized that a mutual company was in two types of business. A question was asked about the incidence of taxation. Is there no difference to a mutual company such as this whether it writes 80 per cent of its business in cash and 20 per cent through its mutual members or vice versa? Does this not affect the tax position at all?

Mr. Humphrys: No, I do not think it does, senator. I think the exemption that we have been referring to is based upon the portion of the premium income that comes from the insurance of farm property, and I think the exemption is available to a stock company as well as to a mutual company.

Senator Molson: Provided it writes more than 50 per cent of its business in respect of farm property?

Mr. Humphrys: Yes, so it is not an exemption that flows to a mutual company. It is an exemption that flows to any company that is doing most of its business in insuring farm property.

The Acting Chairman: Are there any other questions?

Senator Kinley: You say that if it does half of its business with farmers, then it does not pay income tax on the other half?

Mr. Humphrys: If more than half of the premium income comes from the insurance of farm properties then it does not pay any corporation income tax.

Senator Kinley: Do you mean the premiums, or the promises to pay on the notes?

Mr. Humphrys: It would be the actual cash income.

Senator Kinley: Suppose I have a farm—I am not a farmer, but I have a farm and I can tell you it is not very profitable—and if I want to insure with this company and I give them my note, then there is no corporation income tax paid on that.

Mr. Humphrys: The company does not pay income tax if more than half of its total premium income comes from the insurance of farm property.

Senator Kinley: And therefore they have an advantage over the company that insures my industrial plant?

Mr. Humphrys: That is correct.

Senator Kinley: It means that there is one law for one company and another law for another. I do not like it.

Senator Croll: Mr. Humphrys, you are talking about the insuring of farm property, but they are dealing with marine insurance and sickness insurance and all the rest, and that is certainly not insurance of farm property.

Mr. Humphrys: No.

Senator Croll: So, they will be caught by the income tax act on their extended business?

Mr. Humphrys: If their business were to extend to the point that they were no longer in the state where more than one half of their

premium income came from the insurance of farm property they would lose their exemption. That is my understanding of the Income Tax Act.

Senator Croll: But if they get any business at all from the other powers here, it will represent the lesser part of their business?

Mr. Humphrys: It depends upon how broadly they operate.

Senator Pearson: Mr. Humphrys, will the passage of this bill entitle them, without any more ado, to go into other provinces and write insurance?

Mr. Humphrys: Yes, senator, they will have the corporate power to do business in any place in Canada.

The Acting Chairman: I take it that there is nothing in this legislation which restricts them to Ontario, although they may voluntarily stay in Ontario?

Mr. Humphrys: That is right.

Senator Walker: There is nothing distinctive about these two companies who seek dominion charters; these rights are available to all such farm insurance companies, whether they are mutual or otherwise, is that not correct?

Mr. Humphrys: Are you referring to the tax matter, Senator Walker?

Senator Walker: Yes.

Mr. Humphrys: Yes. The exemption under the Income Tax Act, as I understand it, depends upon the source of the company's business, not on the capital structure of the company or the organization.

Senator Kinley: It has got to be a mutual company?

Mr. Humphrys: No, I do not think so, senator.

Senator Kinley: As I recall the statute it was purely for the purpose of evading income tax in the West.

Senator Croll: That could not possibly be.

Senator Molson: "Evading" or "avoiding" senator?

Senator Kinley: I do not think it is good law. The insurance business is supposed to accept hazards and insure safety. In the automobile business they take notes and al-

most everybody is travelling on credit, and I wonder where the insurance business is going to go next; I do not like it.

The Acting Chairman: Senator Molson?

Senator Molson: Has this company encountered any problem concerning underwriting profits in the past five years?

W. F. Shoemaker, Manager, Farmers Central Mutual Insurance Company: Honourable senators, in answer to Senator Molson's question we have not experienced underwriting profits in the past five years, and this is one of the things we hope to rectify.

Senator Molson: Could I ask a supplementary? What underwriting losses have there been in the last five years?

The Acting Chairman: Do you want the gross or annual figure?

Senator Molson: From information on the last five years.

Mr. Shoemaker: The underwriting loss in 1966 was \$67,000 covered by investment income. May I answer one question which was put by Senator Kinley? The policyholder does sign a premium note, but when he pays his initial premium he pays the full premium. The residue of the note is intended only for catastrophe. The purpose of the note is just as a contingency in the event that a serious disaster strikes.

Senator Kinley: It is a reserve fund?

Mr. Shoemaker: That is right.

Senator Kinley: Now, a man pays his premium and he pays for a catastrophe. What do you give him for that note?

Mr. Shoemaker: We give him a lesser premium to start with. If you take the two companies, the General Insurance and the farm mutual, you will find the farmers pay a lower rate by virtue of the fact that they pay on a premium note about 40 per cent lower.

Senator Kinley: And no income tax?

Mr. Shoemaker: The corporation pays no income tax.

Senator Kinley: I don't like it.

Mr. Humphrys: Mr. Chairman, in answer to Senator Molson, I have before me a series of figures which were developed when setting up this company. In the last four years the underwriting loss has been as follows: in 1963,

\$43,000; in 1964, \$96,000; in 1965, \$13,000, and in 1966, \$47,000. But that is the loss on insurance operations, and is adjusted by reason of investment income. The net effect on surplus in those four years was as follows: in 1963, an increase in surplus of \$6,000; in 1964, a decrease of \$49,000; in 1965, an increase of \$20,000; and in 1966 a decrease of \$5,000. So the company is just about holding its surplus.

The Acting Chairman: Anything further?

Mr. McGibbon: Mr. Chairman, as counsel on behalf of this company, may I say that the head office of the company is in Walkerton; it was founded in 1894 and has been continuously in business since that time with a good record. Insurance hazards covered are 90 per cent rural and 10 per cent in villages and towns. We have no insurance in the cities. We are not there for direct competition with the large companies. We have a low cost operation with low premium rates, and we find now that under modern practices these farmers do not want fire insurance policy loans, they want a packaged policy to protect them against liability and all the other things that arise in modern business. We are not able to supply that. We are not able to get those powers under the Ontario act. The Ontario act, as you know, under which we were incorporated, was passed in 1887, and it has never been updated for these farm mutual companies. This is the largest company of its kind in Ontario. We have had risks to the extent of about \$261 million, covering rural 90 per cent and 10 per cent on villages and towns. So that in order to service our clients we really need the powers that we are asking for here. As you know, today everyone is insurance conscious, and although 50 years ago a fire insurance policy was all you needed, today you must have liability insurance and all these other kinds which people need to protect themselves against claims. We are catering to the farmers, and it is not our present intention to do otherwise. They come to us and want this other type of insurance, but at the present time we are not able to offer it to them.

Senator Croll: I think you mentioned \$1 million. How many policies are involved?

Mr. McGibbon: Policyholders in the company? I will ask Mr. Shoemaker to answer that.

Mr. Shoemaker: 17,650.

Senator Croll: Is that the last figure?

Mr. Shoemaker: Yes.

Senator Croll: Is it increasing?

Mr. Shoemaker: Yes, about 25 per cent in the last four years.

Senator Molson: To be able to write all these new classes of risk on premium notes, if a call were necessary, would it be proposed that a call on the premium notes be universal for all classes of insurance?

Mr. McGibbon: It could not be universal. If we went into automobile insurance, you would not take a premium note; you would take a cash premium, under those circumstances. A premium note is really only being taken by these companies, as far as I know, on the fire insurance, or where you have some other lines such as liability in with the fire insurance. I do not know what the practice is in other lines.

Mr. Shoemaker: Senator Monson, there have not been assessments in recent years. In the circumstances, it is applied as a percentage of the note over all noteholders.

The Acting Chairman: Will this be true if you have different classes of insurance?

Mr. Shoemaker: I would assume so, yes; it would be a percentage over all.

Senator Molson: If you have many other applications, provided you have a licence to issue, would you take a note?

Mr. Shoemaker: It is unlikely.

Senator Kinley: You say you could not get this in Ontario at the time but you would like to get it here.

Mr. Shoemaker: We would like to get it here.

Senator Kinley: In the case of automobile insurance, if you give the insurance you will take title to the car and you will own the car?

Mr. Shoemaker: If we issue an automobile insurance we will be in the same position as any other automobile insurance company.

Senator Kinley: Sure, but we pay taxes.

Mr. Shoemaker: The charter of our company might change if we get into other lines. I would think then it would become necessary, but at the moment 90 per cent of our business is farm business.

Senator Kinley: You are in a very special business.

Mr. Shoemaker: I would say so.

Senator Kinley: What would be your reserves?

Mr. Shoemaker: Our reserves would be just under \$1 million.

Senator Kinley: How much corporation tax do you pay?

Mr. McGibbon: These insurance companies pay premium taxes. What would be your premium tax?

Mr. Shoemaker: The company has not, in the last five years. I believe the actual statute making this exemption was passed some time in the early forties and we have not paid corporation tax since then.

Senator Kinley: In the 1940s? Yes, that would be the Dunning statute of that time, because I came over to the Senate in 1945.

Mr. McGibbon: This is a mutual company. There are no shareholders and no stock.

Senator Kinley: How would this agree with the experts on taxation, the Carter report? I am afraid there would be a conflict on that. It is in the hands of the Government, and they tell us they will bring something down within some months.

The Acting Chairman: Whatever is done will apply to all companies, I assume.

Senator Walker: There will be a lot of conflict when that report comes down.

The Acting Chairman: Are there any more questions?

Senator Kinley: This has to go to the House of Commons. It was introduced here?

Senator Walker: Yes.

Senator Kinley: They will look after it.

Some hon. Senators: Oh!

Senator Kinley: I am against it.

The Acting Chairman: You are against the general act.

Senator Kinley: I am against people doing business without paying taxation.

Senator Rattenbury: The question is academic if there is no profit.

Senator Kinley: Profit is an elusive thing.

The Acting Chairman: If there are no more questions, do you wish to discuss the bill clause by clause?

Senator Croll: Mr. Chairman, I move that we report the bill without amendment.

Some hon. Senators: Agreed.

Senator Kinley: On division.

The committee concluded its consideration of the bill, and proceeded to the next order of business.



Government
Publication

Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 4

Complete Proceedings on Bill S-12,

intituled:

"An Act to incorporate Western Farmers Mutual Insurance Company".

WEDNESDAY, JUNE 14th, 1967

WITNESSES:

Department of Insurance: R. R. Humphrys, Superintendent.

Western Farmers Mutual Insurance Company: W. Sutherland, President;
B. J. Wilks, Manager; W. J. McGibbon, Q.C., Counsel.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Leonard	Thorvaldson
Cook	Macdonald (<i>Cape Breton</i>)	Vaillancourt
Croll	Macdonald (<i>Brantford</i>)	Vien
Dessureault	MacKenzie	Walker
Everett	Macnaughton	White
Farris	McCutcheon	Willis—(49)
Fergusson	McDonald	
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extracts from the Minutes of the Proceedings of the Senate, Thursday, June 8th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Walker, P.C., moved, seconded by the Honourable Senator Pearson, that the Bill S-12, intituled: "An Act to incorporate Western Farmers Mutual Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Walker, P.C., moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 14th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-12, intituled: "An Act to incorporate Western Farmers Mutual Insurance Company", has in obedience to the order of reference of June 8th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'Arcy Leonard,
Acting Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 17th, 1967.

(4)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.10. a.m.

In the absence of the Chairman, and on Motion of the Honourable Senator Haig, the Honourable Senator Leonard was elected *Acting Chairman*.

Present: The Honourable Senators Leonard (*Acting Chairman*), Cook, Croll, Fergusson, Gouin, Haig, Irvine, Isnor, Kinley, Molson, Pearson, Rattenbury and Walker.—(13).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-12.

Bill S-12, An Act to incorporate Western Farmers Mutual Insurance Company", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

Western Farmers Mutual Insurance Company:

W. Sutherland, President.

B. J. Wilks, Manager.

W. J. McGibbon, Q.C., Counsel.

On Motion of the Honourable Senator Molson it was *Resolved* to report the said Bill without amendment.

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 14, 1967

The Standing Committee on Banking and Commerce, to which was referred Bill S-12, to incorporate Western Farmers Mutual Insurance Company, met this day at 10.10 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard, Acting Chairman, in the Chair.

The Acting Chairman: We proceed now to Bill S-12, to incorporate Western Farmers Mutual Insurance Company.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Acting Chairman: In connection with this bill, we have Mr. Humphrys, the Superintendent of Insurance and we also have Mr. McGibbon as counsel for this company. There is also here Mr. Sutherland, President of the company, and Mr. Wilks, the manager. Does the committee wish to hear from Mr. Humphrys again?

Some Hon. Senators: Agreed.

Mr. R. R. Humphrys, Superintendent of Insurance: Mr. Chairman, this bill is almost identical with that we have just discussed and is for the same purpose. The existing provincial company, Western Farmers Mutual Insurance Company, has its head office in Woodstock and it is engaged now almost exclusively in windstorm insurance. They too feel pressures to provide a better range of service to their policyholders and they are seeking power to write fire insurance and other classes of insurance.

The company is well established, being about 60 years old. It is in a good financial

position, with assets of about \$3.3 million and a surplus of over \$2½ million. The latest figures I have show about 34,000 policyholders.

In other respects, my comments on this bill would parallel those I made on the previous one, so I do not think there is anything further I can usefully add. The officers of the company are here to explain any special points. Its main point is that this has been started as and operates as a windstorm company, whereas the company we have just dealt with was operated also as a fire insurance company.

Senator Isnor: Has this company always been operated and known as Western Farmers?

Mr. Humphrys: My understanding is that that is so.

Senator Isnor: In Ontario?

Mr. Humphrys: Yes.

Senator Molson: What is the premium income?

Mr. Humphrys: About \$600,000 last year.

The Acting Chairman: Would you like the record of the underwriting?

Mr. McGibbon: Mr. Wilks, would you give that figure?

Mr. Beverley James Wilks, Manager, Western Farmers Mutual Insurance Company: Last year we had an underwriting profit of about \$260,000. In 1964 we had an underwriting loss of about \$80,000. But in the 1960s we made money, other than in 1964.

Senator Kinley: That is true of all the insurance companies in Canada. They are making losses. They are all up against it. Insurance business today is becoming an unprofitable business.

Senator Croll: Mr. Wilks said there was a surplus all through the 1960s—

Senator Kinley: They had a deficit.

Senator Croll: A deficit in one year, but this was a profit last year.

Mr. Wilks: Yes, an underwriting profit of \$260,000.

Senator Kinley: I will ask the Superintendent whether the fire insurance business and the automobile insurance in Canada is in good shape? Are they making a profit?

Mr. Humphrys: Fire and casualty business suffered a heavy loss for a number of years, senator. Last year, 1966, the experience was a little bit better than it had been in the previous four or five years. Generally, the industry has been going through quite a trying time, as far as its financial results are concerned.

Senator Kinley: Is the farmers' risk a big one? Is it hazardous? Are they careless people? Do they have many fires, or are they a safe class?

Mr. McGibbon: Farmers live in unprotected areas and the risk is greater.

Senator Kinley: In some places.

Mr. McGibbon: It is mostly rural.

Senator Kinley: Oh, no, no. I have to pay to the county for protection. I pay for fire protection to the municipal council, and I live in the town. They have fire protection down in Nova Scotia now; they have it all over. But this does not seem right. There ought to be some other way to help people who are poor, other than making provision that they do not pay. The rural taxation in the country is made so as to be favourable to some people and unfavourable to others. Everybody should be under the same rule of law. I do not like it.

Senator Walker: This is a matter of general principle that the senator is outlining. This is an individual company, as I understand it, and they are getting no advantages over any

other company in similar circumstances. Is that right?

Senator Kinley: I am not sure about that. They are a risk company. They have done well.

The Acting Chairman: I think Senator Walker is making the general point that this company is in the same position as any risk company or any co-operative insurance company under the general law.

Senator Kinley: As a co-operative, but the general insurance companies incorporated under the corporation law have to pay taxes.

Senator Croll: This is not quite right.

Senator Kinley: You have to be dealing with farmers in a co-operative way to make it clear you have not to pay taxes.

The Acting Chairman: It depends on the share capital.

Senator Kinley: You must do it.

Mr. Humphrys: The tax obligation of these companies is not dealt with in the insurance legislation, so any comments I make on the tax position are based on my understanding. Actually, to change the tax position of these companies, one would have to amend the Income Tax Act—and that is not an act which we administer, so it is not within any of our powers to alter the tax position.

Senator Kinley: There is a statute that grants co-operative companies relief from insurance, and it goes further, it makes the farmers' organizations appoint the directors, and the directors are not independent. They are appointed by the farmers' organizations.

The Acting Chairman: Any other questions? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 5

Complete Proceedings on Bill S-15,
intituled: "An Act to incorporate Seaboard Finance Company of Canada".

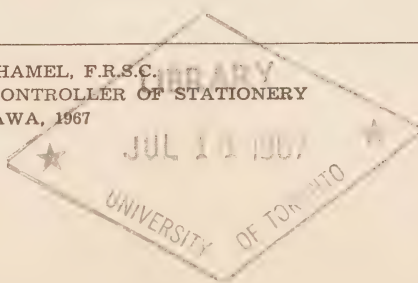
WEDNESDAY, JUNE 28th, 1967

WITNESSES:

Department of Insurance: R. R. Humphrys, Superintendent; *Seaboard Finance Company of Canada:* S. A. Berteaux: President, J. W. Thomas, Parliamentary Agent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967



THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(49)
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 13th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Prowse for the Honourable Senator McDonald moved, seconded by the Honourable Senator Gouin, that the Bill S-15, intituled: "An Act to incorporate Seaboard Finance Company of Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Prowse moved, seconded by the Honourable Senator Gouin, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 28th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-15, intituled: "An Act to incorporate Seaboard Finance Company of Canada", has in obedience to the order of reference of June 13th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 28th, 1967.

(5)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9:30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Cook, Croll, Everett, Fergusson, Gershaw, Gouin, Irvine, Isnor, Kinley, Leonard, MacKenzie, Macnaughton, McDonald, Molson, Pearson, Rattenbury and Thorvaldson.—20

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was *Resolved* to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-15.

Bill S-15, "An Act to incorporate Seaboard Finance Company of Canada", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

Seaboard Finance Company of Canada:

S. A. Berteaux, President.

J. W. Thomas, Parliamentary Agent.

On Motion of the Honourable Senator Molson it was *Resolved* to report the said Bill without amendment.

At 10:05 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 28, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-15, to incorporate Seaboard Finance Company of Canada, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: We have before us now, Bill S-15, to incorporate Seaboard Finance Company of Canada.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: In connection with this bill, we have here Mr. J. W. Thomas, the parliamentary agent, and Mr. S. A. Berteaux, president of the company. Mr. Humphrys, would you make a statement on this bill?

Mr. R. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, this bill would incorporate a small loans company, and, if so incorporated, it would be subject to the Small Loans Act.

Its purpose would be to make consumer loans to the public and to the extent that those loans are amounts of \$1,500 or less, the loans would be subject to the Small Loans Act. The company, however, would be empowered to make loans of over \$1,500.

The Chairman: There is nothing unusual in that power?

Mr. Humphrys: No. There are many companies incorporated of this type. There are some 80 companies licensed as lenders under this loans act. At the present time there are only five federally incorporated companies.

Most of them are incorporated provincially and obtain a licence under the Small Loans Act.

The Chairman: Are they provincial by Letters Patent or by legislation?

Mr. Humphrys: By Letters Patent. There are five companies incorporated by Parliament and this would be the sixth, if incorporation is granted.

There is a company now called Seaboard Finance, that is licensed now under the Small Loans Act, and it does business in practically all provinces of Canada, and has a very large volume of business.

The purpose of this incorporation is to change that corporate entity from a provincial standing to a federal standing. This company, if incorporated, would take over the business now being transacted by the provincial company; and the provincial company would change its name and change its purposes to that of a holding company for the purposes of the Seaboard interests in Canada. They have one or two other companies, a private mortgage loan company and an investment company.

The Chairman: Is there some particular reason for federal incorporation at this time?

Mr. Humphrys: They desire federal incorporation to give recognition to the fact that they do business all across the country; therefore, federal incorporation is appropriate in the circumstances. They are interested also in protecting their name, and I think they believe that there will be some additional prestige through their status as a federally incorporated company.

Those are the principal motives, Mr. Chairman. So far as the department is concerned, we have no objection to this move. The company, if incorporated, would be subject to most provisions of the Loan Companies Act, as well as the Small Loans Act, so

it would be subject to a rather more extensive code of regulations than it is in its present form.

Senator Pearson: Where did they get the name "Seaboard Finance Company" and where is the headquarters?

Mr. Humphrys: The principal company is a United States company, a very large consumer company, operating in that field and it is called Seaboard.

Senator Pearson: So this is a subsidiary?

Mr. Humphrys: This is a wholly-owned subsidiary. As to most of the borrowing this company does, it gets its money partly from the parent company in the United States, partly from banks in Canada, and partly from the sale of short-term notes in investment companies in Canada, to institutions.

Senator Croll: Once it has the approval of Parliament, will it then wind up the provincial companies?

Mr. Humphrys: The existing Seaboard Finance, the Ontario company, will not be wound up but will be continued as a holding company, to hold the group together as to certain interests in Canada. It is my understanding that the ownership of this federal company will lie in the existing provincial company. The provincial company will change its name and change its purpose, and the provincial company in turn is owned by Seaboard in the United States.

Senator Croll: Did you say they will continue to do business under the provincial charter?

Mr. Humphrys: Not the loan business. The loan business will be in this company.

Senator Kinley: Is that an American company?

Mr. Humphrys: The provincial company is incorporated in Ontario but it has always been owned by the United States company.

Senator Croll: Do we not have some confusion here where a company does one bit of business under a provincial charter and then does another kind of business under a dominion charter?

The Chairman: There is a change of name.

Mr. Humphrys: The provincial company will change its name and will not be engaging in

the same type of activity as this company. It is my understanding that it will be converted wholly to a holding company and will not be making loans at all.

Senator Everett: Will the holding company own the shares of the federal company?

Mr. Humphrys: Yes.

The Chairman: Are there any other questions?

Senator Leonard: Again, what kind of assurance do we have, in incorporating this company under this name, that the public would be able to distinguish as between an existing company of the same name under a provincial licence and this federal company? Is it on record that the provincial company is definitely going to transfer its business to the federally incorporated company?

Mr. Humphrys: It is definitely on our records, Senator Leonard, and we will not license this company under the Small Loans Act until we can withdraw the licence for the provincial company.

Senator Leonard: That satisfies me. There is only one other question. Did you give us the figures as to the volume of business and the size of the company?

Mr. Humphrys: Seaboard Finance Company has assets of \$73 million, including small loans—that is, loans subject to the Small Loans Act—of \$30 million, and other loans amounting to \$35 million.

Senator Thorvaldson: What is the capital?

Mr. Humphrys: The capital is \$205,000 the surplus \$5,500,000, the contributed earned surplus \$1,700,000.

Senator Thorvaldson: And the rest contributed?

Mr. Humphrys: Yes. The rest of the company's funds have been obtained by borrowing \$27 million in short-term notes, \$13 million from banks and \$24 million from the parent company. So, these borrowed funds, together with the capital contributed in earned surplus, make up the funds available to put out in loans.

Senator Leonard: Do your figures give the operating surplus?

Mr. Humphrys: Yes, Senator Leonard. The company had income for the year on small

loans business of \$4.9 million and on other business of \$1.8 million.

Senator Croll: \$4.9 million on the \$35-million loan?

Mr. Humphrys: On the \$30 million of small loans.

Senator Croll: And on the other \$35 million it had?

Mr. Humphrys: \$1.8 million.

Senator Croll: What was the form that the other \$30 million took?

Mr. Humphrys: It would be loans in excess of \$1,500 and some investments in subsidiary companies. No acceptance business—is that correct?

Mr. S. A. Berteaux, Vice President, Seaboard Finance Company of Canada Limited: There is a portfolio of around \$5½ million.

Senator Croll: Does it not strike you, as one in charge of the Small Loans Act, that this is a disproportionate profit? From the Small Loans Act, comparing the loans of under \$1,500 to the \$30 million on loans in excess of \$1,500, the profit is almost 4-to-1.

Mr. Humphrys: Senator Croll, I gave the income. The expenses under these small loans were \$4.3 million and the expenses under the other business were \$1.7 million. So the gross profit transferred to the company, to the profit and loss account, was \$559,000 on the small loans business and \$86,000 on the other business.

Senator Croll: It does not help it any. Is there any indication as to how much is paid to head office, for instance, for advice, research, and so on, money that goes to the United States?

Mr. Humphrys: We have a distribution of expenses, but there is no specific item that is paid for management services. Any services that the company receives from the head office would be paid for on the basis of services rendered, but the parent company is not drawing profits off under the guise of management fees or anything of that nature, so the distribution of expenses is, to the best of our knowledge and ability to check, a distribution of expenses on the basis of service rendered and a fair charge for services rendered to the Canadian company.

Senator Croll: What does it amount to?

Mr. Humphrys: The total expenses charged against the small loans account were \$4.4 million.

Senator Croll: No, but we were speaking of what went to the States for services rendered and management fees.

Mr. Humphrys: I have no figures on that.

Mr. Berteaux: Last year it was something in the neighbourhood of \$200,000—maybe \$225,000 or \$230,000.

Senator Croll: Approximately \$200,000 for management services rendered by the parent company in the United States?

Mr. Berteaux: Yes.

Senator Croll: What did they consist of?

Mr. Berteaux: I suppose the supervision. They handle all our accounting. The individual branch reports on a daily basis to the data processing system in Los Angeles. All reports are processed by IBM equipment and are sent out on a monthly basis. A certain amount of advertising comes out of the advertising department in Los Angeles. I suppose a general, overall part of the business is really under their control.

Mr. Humphrys: Perhaps I could correct an answer I made. This company does not in fact make loans to the public over \$1,500. The other activities, the other loans I referred to, are in the form of advances to other companies in the group; but borrowing is done for the Canadian operation through this company, and part goes out in small loans and part loans to the other companies in the group for their other activities.

Senator Kinley: From the parent company to the subsidiaries?

Mr. Humphrys: From the main company, they are making loans to the other subsidiaries.

Senator Kinley: What dividend do they send abroad?

Mr. Humphrys: The dividend paid to shareholders?

Senator Kinley: That is, when the shareholders were all in the company in the United States.

Mr. Humphrys: There were no dividends paid to shareholders during 1966.

Senator Thorvaldson: In regard to this question of management fees, has your department any control or any say in the matter as to management fees that are paid by Canadian subsidiaries to foreign-owned companies? Here there are considerable management fees paid to the holding company in the United States. Does that come within your purview at all, or does it come within the purview of any department of Government—say, the taxation branch, and so on?

Mr. Humphrys: We have no legislative control over that item.

The Chairman: The income tax people would.

Mr. Humphrys: Yes, the income tax people would be concerned, to be sure that any such fees are justified by services rendered; otherwise it would be a way of drawing profits off without paying taxes. In our supervision of these companies or in our inspection, if we encountered anything that gave us any reason to think the fees could not be justified by services rendered, we would discuss the matter with the company and, if necessary or if we thought it desirable, we would draw the attention of the income tax authorities to the matter.

The Chairman: You have an indirect control, the issue of the licence annually is discretionary.

Mr. Humphrys: Yes. I should make it clear that in our supervision of these companies our principal concern is to see to it that they comply with the Small Loans Act, and do not charge interest rates on their loans in excess of the maximum under that act. They are not for the most part companies that we are concerned with from a solvency point of view because they do not accept deposits from the public, or really borrow money from small investors in a widespread way. They do some borrowing in the investment community, but it is generally thought that the investing institutions can look after their own interests.

Senator Burchill: This is a provincial company. You would not have any control over this company, would you?

Mr. Humphrys: It is licensed under the Small Loans Act, which is a federal act.

Senator Thorvaldson: Can you tell us if there is a standard practice among these Canadian companies to pay management fees to the foreign owner?

Mr. Humphrys: No, I would say it is unusual.

Senator Thorvaldson: That is, in regard to companies that your department knows of.

Mr. Humphrys: Yes.

Senator Thorvaldson: It is unusual?

Mr. Humphrys: It does happen, but it is not a usual custom. If the parent company is in the United States then sometimes the Canadian subsidiary will make use of the computers and the high speed, but very expensive, data processing equipment. It will use the equipment in the head office of its parent, and it will pay for that. This type of thing goes on, and it is increasing to some extent. However, we have not thought that it represents any problem at the present time.

Senator Croll: Mr. Humphrys, how many branches have they in this country?

Mr. Humphrys: Seaboard?

Senator Croll: Yes.

Mr. Berteaux: A hundred and thirty four.

Senator Croll: They have 134 branches in this country? Is there any justification for not having the accounting done in this country?

Mr. Berteaux: No, not really, other than as Mr. Humphrys has pointed out, the expense of these high speed computers et cetera can be very great.

Senator Croll: But there are many companies with far fewer branches and which do less business that have their computer arrangements in this country. If we close our eyes to this sort of process how are we ever to get computers established here.

The Chairman: Surely, that is a judgment decision, which will be based upon the economics of it.

Senator Croll: Yes, but I will be outspoken about it.

Mr. Humphrys: I think this point is well taken. In our view the Canadian company should have its books of account here, and have its accounting done here. We have found in our administration that it is rather difficult for us to take that view with a Canadian company, and tell it that it must go down the street and use the services of a

data processing company had have its computer work done there, and that it cannot use the machines in its head office.

However, we have not objected to their having their data processed through their head office so long as we have access to the full records, and the books of account are kept in Canada.

Senator Thorvaldson: This was all very well ten years ago when computers were very rare, but will the same argument hold true throughout history. These data processing services are being developed in the United States instead of in Canada. I think this is a situation which deserves a general review, having regard to the hundreds of Canadian companies that are wholly-owned by foreign parent companies.

Mr. Humphrys: I agree with your view, Senator.

Senator Croll: What do we do about it, Mr. Humphrys?

Mr. Humphrys: We are doing everything we can to make sure that the accounting work is done here.

The Chairman: We can deal with it in general legislation supplementing some of the other things that were mentioned by Mr. Humphrys.

Senator Croll: The way to deal with it is through the income tax department. That would be the place in which to deal with it.

Mr. Humphrys: It is a problem that is, of course, very widespread, and it affects all types of companies that are foreign owned. The extent to which they rely on their parent for technical advice, research advice, management advice, and advertising material should be looked at, because these are matters that run through their whole accounting system.

Senator Croll: Mr. Humphrys, I recall having brought to my attention recently a number of Canadian companies, each of which happened to have its accounting work done by a Canadian firm. They were companies that I was able to recognize as being Canadian because they were doing a considerable amount of business in Canada. None of them brought forward the idea of having their work done by data processing institutions in the United States.

As Senator Thorvaldson has pointed out, there was an excuse some time ago for having this work done in the United States, but that is not valid today.

Mr. Humphrys: Not so much, senator. They were doing more of their accounting in Canada before the computer systems came into being.

There is quite a trend now in corporations that have a wide-spread branch office system to use central data processing and to send data in from the branch office on a daily basis through leased wires overnight, have it tabulated and processed and back to the branches ready for the morning. This goes on to an increasing extent, and it creates many problems in relation to the point Senator Thorvaldson was raising, that the Canadian subsidiary very often is treated as another branch and gets swept up in this sort of branch operation.

Unless there is some vigilance by someone, therefore, it can result in a situation where the records in the Canadian company are practically non-existent.

We have tried very hard in all the companies that we have anything to do with to make sure that the original records and accounts are at the head office in Canada so that when we go to examine the statements we can get the information there. We have not objected to the processing of data through a computer at the head office, so long as it is limited to data processing and it is done in the sense of a service type of activity. But we would take a very strong view against a company having all its original records done that way.

Senator Croll: Who signs their statements? Who is the auditor in Canada?

Mr. Humphrys: All their auditors are Canadian firms.

Senator Leonard: May I ask two questions? First, does that statement disclose the amount of losses in a year's operations, or, together with the amount of actual loss, is the amount reserved as against expected losses charged against the year's operation?

Mr. Humphrys: The statement shows an increase in reserves for bad debts and contingencies at \$147,000. That would be the net change.

Senator Leonard: Does it show the expenses and amount actually charged for losses, or is it included in the general expenses?

Mr. Humphrys: No, the provision for bad debts amounted to \$569,000. They recovered during the year from that \$147,000, and they wrote off during the year \$575,000. So that the balance of the reserves at the end of the year, then, amounted to \$833,000. So there was a net increase in the reserves for bad debts of \$147,000 during the year. So they wrote off by way of losses \$575,000.

Senator Leonard: The other question related to the general character of these companies, not necessarily in respect of this particular company. A good many of these small loans are, I understand, made available on a discount basis. That is, the interest is charged in advance and there is also a practice in some companies to take that interest in profits during the year in which the loan is made, regardless of the loan itself being repayable over a period of time. Is there any policy so far as the department is concerned in dealing with this item of pre-paid discounts on small loans in so far as the company's profit and loss accounts are concerned?

Mr. Humphrys: Yes. Under the Small Loans Act the loans cannot be made on the so-called add-on basis. That is prohibited. The companies must make their charges month by month as the payments come in. So the problem does not arise.

Senator Leonard: That is fine.

Mr. Humphrys: If a company engages in lending activities beyond the area of the small loans, it might make loans on the basis of an add-on charge.

Senator Thorvaldson: So they have that power? A company such as Household Finance is entitled to deduct its interest charges and take them off the principal?

Mr. Humphrys: If the loan is not under the Small Loans Act.

Senator Leonard: Then is that agreeable to the department? Do they accept that as profit during the year?

Mr. Humphrys: We would not regard as proper the taking into income of the full add-on charge when the loan is made.

Senator Molson: Could I ask about the \$30 million of loans which are not under the Small Loans Act? I think you said, Mr. Humphrys, that those were the associated companies in large part.

The Chairman: There was \$35 million to associated et cetera; the \$30 million was small loans.

Senator Molson: At any rate, in what form were these loans and who were those associated companies?

Mr. Humphrys: Perhaps I could call on the representatives of the company?

Mr. Berteaux: The \$35 million of which the senator was speaking would involve primarily Seaboard Securities, which is a second subsidiary in Canada. The securities companies make all the loans over \$1,500. In other words, Seaboard Finance Company of Canada makes only loans under the scope of the Small Loans Act, which is \$1,500. Then, amounts over \$1,500 are made by the securities company.

Senator Leonard: What is the name of the securities company?

Mr. Berteaux: Seaboard Securities Canadian.

Senator Leonard: Is that a federally incorporated company?

Mr. Berteaux: No. That is a provincially licensed company, senator.

Senator Molson: Where is the ownership of the securities company?

Mr. Berteaux: Well, I would say it is a subsidiary of Seaboard Finance Company *per se*, and, of course, again it is owned by the parent in the United States.

Senator Molson: Well, is it a subsidiary of the Canadian company or is it a subsidiary directly of the United States company?

Mr. Berteaux: I would say it is a subsidiary of the Canadian company. Mr. Thomas might have more information on that.

The Chairman: Is that correct, Mr. Thomas?

Mr. J. W. Thomas, Parliamentary Agent, Seaboard Finance Company of Canada: Yes, it is a wholly owned subsidiary of the Seaboard Finance Company of Canada.

Senator Everett: Seaboard Finance Company of Canada is a wholly owned subsidiary of the American company?

Mr. Thomas: Technically, I would say it is, yes.

Senator Everett: Are there any Canadian directors on Seaboard Finance?

Mr. Berteaux: All six directors here are Canadian. Seaboard Finance shows there is one Canadian listed at Los Angeles.

Senator Everett: Is there any intention on the part of the American parent to offer shares in the new company to Canadian shareholders?

Mr. Berteaux: At the present I would say not, but that is not really within my scope. But I would say not for the present at least.

Mr. Humphrys: Nothing has come to our attention to suggest any intention on the part of the parent company to sell shares of the Canadian company.

Senator Croll: As I understand it, if I walked into the office and wanted a loan under \$1,500, the Seaboard Finance Company would look after me.

Mr. Berteaux: Yes.

Senator Croll: If I wanted a loan for \$2,000 the Seaboard Securities Company would look after me.

Mr. Berteaux: Yes. He changes his hat and you find another set of papers.

Senator Croll: I walk over to another counter.

Mr. Berteaux: No, you use the same counter.

Senator Croll: Mr. Humphrys, you said there were five companies incorporated under the federal charter. What are their names, please? I think I know them, but I have a reason for asking anyway.

Mr. Humphrys: Beneficial Finance, Brock Acceptance, Canadian Acceptance, Household Finance, Laurentide Finance.

Senator Croll: How many of those are American? I know Beneficial is.

Mr. Humphrys: Beneficial is, Canadian Acceptance is, and Household Finance.

Senator Croll: That makes three. Are they doing the same thing that Seaboard is doing with respect to data processing?

Mr. Humphrys: Not to the same extent.

Senator Croll: Well, Mr. Humphrys, that is hardly a satisfactory answer. I know you

are doing the best you can in the circumstances but I don't know what you mean by "Not to the same extent."

Mr. Humphrys: They do get some services from their parent, but they are not involved—at least Beneficial and Household, their activities in Canada form a greater proportion than do those of Seaboard at the present time.

Senator Thorvaldson: Mr. Chairman, I want to ask Mr. Humphrys what is the full name of the present Ontario corporation.

Mr. Humphrys: Seaboard Finance Company of Canada Limited.

Senator Thorvaldson: May I ask how they could get that name for an Ontario company? That takes in a lot of ground.

Mr. Humphrys: It certainly strikes me that they went rather far in granting that name.

Senator Thorvaldson: If I were to ask for the incorporation of a company with such comprehensive name in Manitoba or in Saskatchewan, would I get it?

Mr. Humphrys: I would hope not.

Senator Thorvaldson: That is why I raise the point. How long ago was that company incorporated in Ontario?

Mr. Berteaux: Sometime in 1955 or 1956—something like that.

Senator Lamontagne: When Toronto was a seaport.

Senator Leonard: When this company comes under Mr. Humphrys' jurisdiction and he finds on the balance sheet \$35 million of loans to subsidiary companies, how does he deal with this in the course of his duties under the act?

Mr. Humphrys: I think if this company is incorporated the pattern will have to change because as a federally-incorporated company under the Loan Companies Act and the Small Loans Act they could not be permitted to invest their assets in subsidiary companies to that extent, so they will have to take that part of their activity and make it separate from the federal company.

Senator Thorvaldson: When you say "to that extent" just what do you mean? This was the problem with Atlantic Finance. Will such loans be authorized to any extent?

Mr. Humphrys: No, the loans will not be authorized to any extent. What I meant to say was that that part of their activities will have to be handled elsewhere.

The Chairman: The new company cannot make loans to its subsidiaries.

Senator Croll: Of course they have \$24 million coming in from the States from the parent company, and they will use those funds instead.

The Chairman: Can a small loan company when incorporated carry on any business other than as licensed under the Small Loans Companies Act?

Mr. Humphrys: Yes, they can make loans.

The Chairman: Over \$1,500?

Mr. Humphrys: Yes.

The Chairman: I suppose it will have to do that to exist.

Senator Everett: As I understand it Canadian branch companies borrow money from American parent companies. Do they borrow at the net cost of the money to the American parent or is there a markup?

Mr. Humphrys: I think there is probably a markup.

Mr. Berteaux: I would say there is a small markup and it strikes me it is somewhere in the neighbourhood of 7 per cent or something of that nature. I know it is slightly higher.

Senator Everett: What would the gross profit be to the American company on that markup?

Mr. Berteaux: Because of the Johnson guidelines in the United States, we have been importing very little capital in the last year or in the last two years. Primarily it has been raised through the banks here or on the short-term investment market.

Senator Everett: But you will agree that this could be a form of management fee.

Mr. Berteaux: Again I would assume that the income tax department would have a

certain say in that. I would not be prepared to say how much. It would depend on how much we were being charged, and if that was out of line they would have something to say about it.

Senator Thorvaldson: I have grave doubts if that is an accurate statement. I have grave doubts if the income tax department would be interested in a transaction of that nature. I don't see how it could be related to management fee.

The Chairman: On the question of interest, the income tax people will always look to see if, as between a parent and a subsidiary, it is too high or too low.

Senator Everett: Surely if the level of interest rates in the United States is 1½ per cent lower than in Canada, the income tax people would not be interested because they would be only interested in knowing that Canadians are borrowing at commercial rates. One of the advantages would be that we would be borrowing in Canada at American rates.

Mr. Berteaux: We borrow primarily in Canada with the banking of the parent company, so that as far as short-term financing is concerned the money is raised here in Canada.

Senator Thorvaldson: This is an example of an extraordinarily lucrative business to the American owners, and this was certainly the case prior to the Johnson guidelines. Previously the principal and interest rates between Canada and the United States were very different. Consequently it is a pretty profitable business for the American owners.

Mr. Humphrys: I may say that under the small loans legislation in Canada the rates permitted pursuant to that act are lower than in any jurisdiction in the United States.

The Chairman: Any further questions?

Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee then proceeded to the next order of business.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 6

Complete Proceedings on Bill S-11,

intituled:

***"An Act respecting Principal Life Insurance Company
of Canada".***

WEDNESDAY, JUNE 28th, 1967

WITNESSES:

Department of Insurance: R. R. Humphrys, Superintendent;

***Principal Life Insurance Company of Canada: E. J. Houston, Q.C., Parlia-
mentary Agent; D. M. Cormie, Q.C., President.***

REPORT OF THE COMMITTEE

**ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967**

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
Baird	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Reid
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(49).
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, June 14th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Cameron moved, seconded by the Honourable Senator Boucher, that the Bill S-11, intituled: "An Act respecting Principal Life Insurance Company of Canada", be read the second time.

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Boucher, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 28th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-11, intituled: "An Act respecting Principal Life Insurance Company of Canada", has in obedience to the order of reference of June 14th, 1967, examined the said Bill and now reports the same with the following amendment:

1. *Page 1, clause 1:* Strike out line 17 and substitute therefor "purposes whatsoever."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 28th, 1967.

(6)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.05 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Cook, Croll, Everett, Fergusson, Gershaw, Gouin, Irvine, Isnor, Kinley, Leonard, MacKenzie, Macnaughton, McDonald, Molson, Pearson, Rattenbury and Thorvaldson—(20).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Molson it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-11.

Bill S-11, "An Act respecting Principal Life Insurance Company of Canada", was read and considered.

The following witnesses were heard:

Department of Insurance: R. R. Humphrys, Superintendent.

Principal Life Insurance Company of Canada: E. J. Houston, Q.C., Parliamentary Agent; D. M. Cormie, Q.C., President.

On Motion duly put it was *Resolved* to amend the said Bill as follows:

1. *Page 1, clause 1:* Strike out line 17 and substitute therefor "purposes whatsoever,".

On Motion of the Honourable Senator Macnaughton it was *Resolved* to report the said Bill as amended.

At 10.30 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 28, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-11, respecting Principal Life Insurance Company of Canada, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators, as this is a bill originating in the Senate, I think we should follow our usual practice of having it reported. May I have the usual motion for the reporting and printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: Concerning Bill S-11, the representatives for the company here are Mr. D. M. Cormie, Q.C., the president; Mr. L. A. Patrick, provisional director; and Mr. E. J. Houston, Q.C., parliamentary agent. Senator Cameron was the sponsor of this bill in the Senate. I suggest we follow our usual practice of hearing from Mr. Humphrys first.

Hon. Senators: Agreed.

Mr. R. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, I have very little to say about this bill. Its purpose is to extend the life of a bill that was adopted by Parliament two years ago to incorporate this company, and under the provisions of the Canadian and British Insurance Companies Act, which is an act of general application to insurance companies, it is provided that if a company is incorporated and does not become registered under the Insurance Act to transact business within two years, then its act expires. This company was incorporated in 1965, effective June 30, but

the company was not able to get organized in the two years, for reasons that the representatives of the company perhaps can explain. So, they are now presenting this bill, requesting that that previous act which was passed in 1965 be extended so that the company will have another opportunity to become organized. The bill provides that, if it does not become registered under the Canadian and British Insurance Companies Act within a further two years, the act will expire.

As was explained on second reading, the company will be owned by a holding company that also owns two investment contract companies and a trust company. The principal function of this life insurance company will be to act as a companion vehicle in the company's marketing of investment contracts and mutual funds.

The only other comment I would like to make, Mr. Chairman, is that in the bill as presented there is a point I think should receive attention, because clause 1 provides that the act

...shall be deemed not to have expired and not to have ceased to be in force after the thirtieth day of June, 1967, but to have continued and to be in force for all its purposes whatsoever until the thirtieth day of June, 1969,...

I would suggest for your consideration that the words "until the thirtieth day of June, 1969" be deleted because the purpose is to extend the life of the original act of incorporation within the limit that if the company fails to get registered then by section 2 the act would expire. I feel concerned about the presence of those words in section 1, because they would cause doubt about the position of the company after 1969—

Mr. Hopkins: Even if they did not get a certificate?

Mr. Humphrys: Yes.

Mr. Hopkins: Yes, I would agree with that.

The Chairman: Mr. Humphrys suggests we strike out in line 16 the words following the figures "1967".

Mr. Humphrys: No, I am referring to the words following the word "whatsoever" in line 17.

Mr. Hopkins: That is, we delete the words "until the thirtieth day of June, 1969"?

Mr. Humphrys: Yes. I would suggest, Mr. Chairman, that the representatives of the company explain what happened to them that has made it impossible for them to become organized.

The Chairman: Before we do that I will ask the members of the committee if there is anything further that they wish to ask Mr. Humphrys.

Senator Pearson: How many companies are there owned by this holding company?

Mr. Humphrys: There are three Principal companies—two investment contract companies, and a trust company. They have a number of other subsidiaries that are engaged in service activities such as the real estate business, the brokerage business, and the mortgage brokerage business. But, they are in the process of closing out those subsidiaries so that the organization of the company and its group will be very much simplified, and I think the operations will be reduced to the pattern of a holding company and four subsidiaries. The holding company will own two investment contract companies, a mutual fund management company, a trust company, and this life insurance company.

Senator Pearson: Are the directors and the management of the holding company and its subsidiaries the same?

Mr. Humphrys: That is my understanding, yes.

Mr. E. J. Houston, Q.C., Parliamentary Agent: Mr. Chairman and honourable senators, I have distributed copies of the 1966 annual report of the Principal Group. Mr. Cormie is the president of the company, and his picture appears on the third page of this annual report. He is a distinguished lawyer in Alberta, and a director of a number of companies. I think he is able to answer any questions that you may wish to put to him. I have pleasure in introducing him to you now.

Mr. D. M. Cormie, Q.C., President, Principal Group Ltd: Mr. Chairman and honou-

able senators, I might just point out that the basis under which the original charter was granted has continued in force. I should like to run over the development of the group since the time of the granting of its original charter in 1965 for the life insurance company.

The Chairman: Does that development relate to the delay in completing the organization of this company?

Mr. Cormie: Partially.

The Chairman: Well, to the extent that it does, it is relevant.

Mr. Cormie: Well, we found in 1965, shortly after this charter was granted, that it was desirable to have a little tighter and neater organizational pattern in the group, so it was decided to organize on the same pattern as the Investors Group in Winnipeg with primarily a holding company that was at the same time a principal management company, with the certificate companies operating as wholly-owned subsidiaries. Previously, a number of collateral companies—I heard the senators raise the question—were wholly-owned subsidiaries of the investment or certificate companies, and we found that there was a tendency for there to be a conflict of interest to arise where the subsidiary of one certificate company which was engaged in the mortgage brokerage business was doing business with another certificate company. So, it seemed desirable to eliminate the subsidiaries of the certificate companies.

During the last 18 months the company has been engaged in organizing in the form in which you see it in the present annual report, under Principal Group Ltd. as a holding company. The management of all the companies is the same, and the officers are identical for all practical purposes, except in cases where for a statutory reason or a regulatory reason there have to be outside directors, as in such cases where you might have a mutual fund company and a management company.

Apart from that we found, in the process of organizing, that the competition that has developed over the last 18 months, largely through rising interest rates, had a tendency to require additional liquidity in a number of the certificate companies. Consequently, the directors decided they would like to have an independent appraisal of all the properties of the various companies at the time they were to be consolidated into the group. In the process of these appraisals it was considered

expedient to increase the reserves and the write-downs of certain properties and mortgages by approximately \$1 million. This is based on the appraisals which were taken last August, which related primarily to Associated Investors of Canada Ltd., which was a company purchased by the group in late 1962 from the former United States owners.

Consequently, the reorganization into a pattern similar to that of the Investors Group in Winnipeg, and the appraisal and the eventual write-downs, and the reserves which the directors considered expedient, took the time and the attention of the group, so that the attention of the people who were going to organize the Principal Life Insurance Company of Canada was not available until just recently. Rather than try and rush the organization of the life insurance company and the obtaining of its certificate to commence business, we thought it would be preferable to take a little more time and organize it at a little more leisurely pace.

We have just introduced an I.B.M. 360 system, and the programming on this for the life insurance company is estimated by our accounting department to take from six to eight months. Consequently, we are here today requesting your consent to the extension of the time within which to organize.

Are there any questions?

The Chairman: Well, there is the question to which Mr. Humphrys referred.

Mr. Cormie: Yes, I think that that is most important.

The Chairman: Mr. Humphrys proposed this amendment, and now we have the applicants saying they are agreeable to it. Is there any discussion on it? Do I have a motion to provide for such amendment by striking out those particular words?

Senator Macnaughton: I so move, Mr. Chairman.

The Chairman: Is it agreed?

Hon. Senators: Agreed.

The Chairman: Are there any questions that you wish to ask in respect of this bill?

Senator Leonard: Mr. Chairman, I should like to ask whether Mr. Cormie foresees any conflict of interest arising as between the operations of the proposed life insurance company and those of the other companies in the group.

Mr. Cormie: Well, we do not really have any conflict of interest, Senator Leonard. At the present time we are offering group creditors' risk insurance, but there is a complete lack of flexibility in what the customer can in effect do in the way of insurance. Incidentally, we have written over \$30 million in group credit risk insurance with no commission. We have 87,000 accounts today with approximately \$350 million of business in force in the certificate companies and their mutual funds.

Senator Molson: \$350 million of what business in force?

Mr. Cormie: This would be maturity value of investment certificates. It would be a reasonable equivalent to insurance in force if it was something like a 20 year endowment.

Senator Everett: Is that the only form of insurance you propose to write?

Mr. Cormie: The only kind that is group credit risk, adding savings insurance for a mutual fund plan.

Senator Everett: Do you propose to write other forms of insurance?

Mr. Cormie: Yes. The intention is to write a full range of insurance using and operating the insurance company as an independent, separate organization.

Senator Molson: What about the sales force? Would the agency or sales organization operate independently? Does that mean you will have completely different people in the life insurance field?

Mr. Cormie: This will be necessary because at the present time there is no dual licensing. We do operate two companies in the United States in the certificate business. In Seattle in our sales staff we do get new licences, and our agents there sell mutual funds, certificates and insurance under three separate licences; but in Canada at the present time that is not possible, which means that it is necessary to have a completely separate sales force, but they would be operated by the same central sales agency for control purposes and finance.

Senator Everett: Is the proposal then to obtain actuarial consultants?

Mr. Cormie: Oh, yes.

Senator Leonard: Are any of the securities or certificates issued by the other companies in your group eligible for investment under

the insurance act for your life insurance company?

Mr. Cormie: Well, if I understand your question rightly, it would not be the intention to have cross-investing.

The Chairman: No, the question was whether they are eligible.

Mr. Cormie: Yes, they are eligible, but it is not the intention of the company to have the life company invest in the securities of the other company.

The Chairman: I wonder if Mr. Humphrys would care to make any comment, Senator Leonard.

Senator Leonard: Yes. I was wondering if that intention is to be carried out in conjunction with the Superintendent of Insurance.

Mr. Humphrys: I would say that the investment contracts as such bear a contract under which the purchaser pays a series of instalments over five, ten, fifteen or twenty years and the contract promises to return the purchaser the face amount at the end of the period. They are not the kind of investment instruments that will be used for investment of funds of a life insurance company, and I do not think that we could find anything in the life insurance act which would render them eligible. The mutual fund insofar as it issues shares, and they can be regarded as common shares and have a dividend record, might be technically eligible under the provisions of the act; but as a matter of good practice the department very strongly discourages any life insurance company from investing its funds in a circumstance that is not completely an arm's length one. We would be critical of a company that invested funds in the affairs of an associated or affiliated company.

Senator Leonard: This is the understanding on the part of the applicant of the charter, and it could be left in the hands of the Department of Insurance to put it on record so that the understanding will be known as conveyed here.

The Chairman: Mr. Humphrys, I should like to know here whether you feel you have enough authority in this direction by saying that you would be critical of any such course, or whether you would need any further authority to enforce such a course of action.

Mr. Humphrys: Mr. Chairman, to date we have felt that we have been able to avoid any

serious problems in this area. I may say, however, that my own feeling is that one of the principal dangers that we now face in these growing financial groups in Canada is this question of investing in public funds, that is, money that has been borrowed in situations that are not arms length, where people making investment decisions cannot be sure that they are making the best decision for both companies concerned. That is a matter which should be recognized more specifically in the legislation dealing with companies of that kind than is now the case.

The Chairman: You mean in a general application rather than in a particular one?

Mr. Humphrys: That would be important.

The Chairman: Then that might rest with you to bring some amendments forward.

Mr. Humphrys: Yes, Mr. Chairman. I have in mind making recommendations to the minister of the department.

Senator Burchill: Am I to understand from this discussion that there would have to be fresh capital for this company?

Mr. Humphrys: Oh, yes.

Mr. Cormie: And it would be invested in the normal type of securities that an insurance company would invest in.

The Chairman: Before we finish, may I state that the amendment which has been agreed to in committee consists in deleting the words, "until the 30th day of June, 1969," which appear at line 17 of the bill.

Mr. Hopkins: In other words, they have to have their certificate of registry for two years. It reads better than before.

The Chairman: Shall I report the bill as amended?

Senator Isnor: Mr. Chairman, perhaps what I am going to say has no direct bearing on the bill itself, but I am wondering about the mutual funds statement. I notice there are \$2 million in various securities—common stocks, and that of a total of \$7 million, \$5 million is invested in common stocks. Is that the usual percentage that you use?

Mr. Cormie: Well, no; I would say this varies according to the recommendation of the investment advisers, the name of whom at present is Davis Palmer Company, New York, and this will vary according to the judgment

of the investment advisers. There is a tendency recently to move more heavily into United States stocks.

Senator Isnor: Yes, in stocks in a mutual fund.

Mr. Cormie: Yes.

Senator Isnor: In other words, you have 80 per cent investment in common stocks?

Mr. Cormier: Yes, that is correct.

Senator Isnor: That struck me as very high.

Mr. Cormie: This will vary. It has moved up. I believe six months ago it was close to 62 per cent in common stocks. Now it has moved up recently to the time of this statement, and you will notice in November a big change in the proportion in common stocks between November 1966 and February 1967, so that would indicate I believe what we are saying

that the movement into common stocks has only occurred recently.

Senator Isnor: You have no set rule in regard to percentage?

Mr. Cormie: There are certain limitations set out in the prospectus, yes. There are certain limitations, but these are within the limitations set out.

Senator Isnor: What is their usual percentage?

Mr. Cormie: They usually keep somewhere between 60 and 80 per cent.

Senator Isnor: Thank you.

The Chairman: Shall I report the bill as amended?

Hon. Senators: Agreed.

The Committee then proceeded to the next order of business.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 7

Complete Proceedings on Bill S-14,

intituled:

"An Act respecting British Northwestern Insurance Company".

WEDNESDAY, JUNE 28th, 1967

WITNESSES:

Department of Insurance: R. R. Humphrys, Superintendent;

British Northwestern Insurance Company: James K. Hugessen, Parliamentary Agent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	O'Leary (<i>Carleton</i>)
Aseltine	Gershaw	Paterson
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Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(49)
Flynn	Molson	

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, June 13th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Molson moved, seconded by the Honourable Senator Bourque, that the Bill S-14, intituled: "An Act respecting British Northwestern Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Molson moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

WEDNESDAY, June 28th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-14, intituled: "An Act respecting British Northwestern Insurance Company", has in obedience to the order of reference of June 13th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 28th, 1967.

(7)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Cook, Croll, Everett, Fergusson, Gershaw, Gouin, Irvine, Isnor, Kinley, Leonard, MacKenzie, Macnaughton, McDonald, Molson, Pearson, Rattenbury and Thorvaldson.—(20)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Leonard it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-14.

Bill S-14, "An Act respecting British Northwestern Insurance Company", was read and considered.

The following witnesses were heard:

Department of Insurance: R. R. Humphrys, Superintendent.

British Northwestern Insurance Company: James K. Hugessen, Parliamentary Agent.

On Motion of the Honourable Senator Croll it was *Resolved* to report the said Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Wednesday, June 28, 1967.

The Standing Committee on Banking and Commerce to which was referred Bill S-14, respecting British Northwestern Insurance Company, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: May I have the usual motion for the reporting and printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: Bill S-14 is an act respecting the British Northwestern Insurance Company. We have as witnesses, Mr. J. F. Caird, president; Mr. R. D. Allan, secretary-treasurer, and Mr. James K. Hugessen, parliamentary agent.

Mr. R. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, this bill is a simple one. It has two purposes. One is to change the name of the existing company, the British Northwestern Insurance Company; and the other is to provide for an increase in capital.

The British Northwestern Insurance Company is a federal company, having been federally incorporated in 1917, but it started earlier as a provincial company. It is owned by the Eagle Star Insurance Company, a prominent British company with worldwide interests and a very large volume of business.

The Eagle Star also operates in Canada on a branch basis. It has this subsidiary and another subsidiary in active operation in Canada.

Its intention is to concentrate its Canadian business in this company, the British North-

western Company, and to withdraw the activities of the branch of the parent company, so that its whole activity in Canada will be through this particular subsidiary.

It wants a change in name, to link the company more closely with its group as a whole, to convey the identity and the ownership.

In connection with the plan to increase the activity of this company and to concentrate the Canadian activities, the company will need more capital. Consequently, the request is that the authorized capital be substantially increased. This is, in our opinion, appropriate in the circumstances.

The company, and the Eagle Star group in Canada, is active in the fire and casualty business, not in the life business. Most of the activity is in fire, but they do a substantial volume of automobile insurance and miscellaneous insurance.

Senator Everett: May I ask the Superintendent the last date for which he has a financial statement of the company.

Mr. Humphrys: December 31, 1966.

Senator Everett: Would it show an underwriting figure of profit and loss?

Mr. Humphrys: The company had an underwriting gain in 1966 of \$90,000. Its premium income was \$3 million in 1966.

Senator Everett: And its investment income?

Mr. Humphrys: Its investment income was \$94,000.

Senator Everett: Thank you.

Senator Leonard: Mr. Humphrys, what happens to the British Eagle Star in Canada?

Mr. Humphrys: Its insurance will be either allowed to run out and be re-written as it comes up for renewal, in this company, or there will be a portfolio transfer where this

company will take over the policies which have been written by the Eagle Star.

Senator Leonard: The Canadian people will not be offered an opportunity to insure in either a British company or a Canadian company by the name of Eagle Star?

Mr. Humphrys: No. My understanding is that the activities of this group in Canada will be channelled through this company alone.

Senator Burchill: Where are the head offices?

Mr. Humphrys: In Toronto.

The Chairman: Are there any other questions? Mr. Hugessen, have you anything to add?

Mr. James K. Hugessen, Parliamentary Agent: No, Mr. Chairman, I have nothing to add.

The Chairman: Honourable senators, are you ready for the question? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Committee adjourned.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 8

First Proceedings on Bill S-21,
intituled:
"An Act to amend the Food and Drugs Act".

WEDNESDAY, NOVEMBER 8th, 1967

WITNESSES:

Department of National Health and Welfare: Dr. A. C. Hardman, Director, Scientific Advisory Services; J. D. McCarthy, Legal Adviser. Royal Canadian Mounted Police: Inspector J. A. Macauley, Criminal Investigation Branch.

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ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

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Aseltine	Gershaw	Paterson
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Croll	Macdonald (<i>Brantford</i>)	Vien
Dessureault	MacKenzie	Walker
Everett	Macnaughton	White
Farris	McCutcheon	Willis—(48)
Fergusson	McDonald	
Flynn	Molson	

Ex Officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 1st, 1967:

"Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill S-21, intituled: "An Act to amend the Food and Drugs Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Farris, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNeill,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 8th, 1967.

(9)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9:50 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Benidickson, Blois, Burchill, Croll, Fergusson, Gershaw, Irvine, Isnor, Kinley, MacKenzie, McDonald, Molson, Pearson, Smith (*Queens-Shelburne*), Thorvaldson and Walker. (20)

Present but not of the Committee: Honourable Senator Sullivan.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk of Committees.

On motion of the Honourable Senator McDonald it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-21.

Bill S-21, "An Act to amend the Food and Drugs Act", was read and considered.

The following witnesses were heard:

Department of National Health and Welfare:

Dr. A. C. Hardman, Director, Scientific Advisory Services.

J. D. McCarthy, Legal Adviser.

Royal Canadian Mounted Police:

Inspector J. A. Macauley, Criminal Investigation Branch.

The Honourable Senator Sullivan read into the record a statement with respect to the users and uses of "LSD".

The Honourable Senator Molson tabled for consideration by the Committee a proposed amendment to clause 2, with respect to proposed new section 41.

The Chairman moved that a sub-committee composed of the Honourable Senators Croll, Hayden (*Chairman*), Molson, Thorvaldson and Walker be constituted to consider the proposed amendment, which motion was agreed to.

Consideration of Bill S-21 was then adjourned.

At 10.45 a.m. the Committee then proceeded to the next order of business.

Attest:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 8, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-21, to amend the Food and Drugs Act, met this day at 9.50 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators, this has been variously designated as the LSD bill. Is there a desire in the committee that we report and print the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: On Bill S-21 we have certain representatives here. We have Dr. A. C. Hardman, who was before us last year when we had this bill for consideration. He is Director, Scientific Advisory Services, Department of National Health and Welfare. With him is Mr. J. D. McCarthy, the department's legal adviser. Then we have Inspector J. A. Macauley of the Criminal Investigation Branch, R.C.M.P., and also Staff Sergeant Yurkiw.

I should like to make this suggestion to the committee. We went into this bill quite exhaustively last year. If you recall, we made an amendment and then the bill did not proceed further. My suggestion is that before we look at the provisions of the bill we might hear Dr. Hardman, and possibly Inspector Macauley, and learn what the situation is up to this moment. Some honourable senators may have statements to make at that time, and then we can look at the provisions of the bill. Does that meet the wishes of the committee?

Hon. Senators: Agreed.

The Chairman: Dr. Hardman, would you give us a resumé of the facts down to this time leading to bringing in these proposed amendments?

Dr. A. C. Hardman, Director, Scientific Advisory Services, Department of National Health and Welfare: Ladies and gentlemen, on April 26 I did speak to this committee and quickly reviewed and gave a reasonable background to the problems of LSD. Ever since my testimony at that time there has been further evidence given out in the scientific literature, and I noted that the Hon. Dr. Sullivan referred to this in the Senate quite recently. A group of doctors at Buffalo found evidence that LSD in rather small quantities was causing damage to the chromosomes in white blood cells. The chromosomes are that part of a cell which carry the genetic information. Studies carried out in Oregon disclosed evidence that this type of damage was transmitted to the children of pregnant women who had taken LSD during their early pregnancy. The significance of this damage is not known at this stage.

However, we do have studies of other types in which a similar type of damage occurs. In one of these there would appear to be some evidence that the type of breakage of this chromosome is similar to that occurring in certain types of leukemia, so that we are having now evidence of damage to cells in humans.

There have been tetragenic studies carried out with animals to determine the effect of LSD on the offspring of rats and mice. These studies, reported in the *Journal of Science*, disclose that LSD is tetragenic; in other words, that in a litter there are some that are deformed and the size of the litter is decreased. Furthermore, there is a phenomenon known as resorption, which means that when a faulty rat or mouse fetus is damaged, it will be absorbed by the body or resorbed by the body. So we have now some increasing scientific evidence of the hazards of this.

We have one other piece of information regarding the therapeutic effects of LSD. This was promulgated with Dr. E. Baker's book published by the University of Toronto. He reiterated in it that, in their experience, they have found that lysergic acid diethylamide in the treatment of alcoholics and neurotics is not too effective, it is not a miracle drug in this area.

Honourable senators, I think this is a very quick summary of what is in the scientific and professional literature since I reported to you last.

Senator Pearson: Is this permanent disturbance to the cell, the genes? Supposing a teenager took it today, would it result in permanent damage throughout his life?

Dr. Hardman: We do not know, sir. The studies in Buffalo indicated that damage existed, in one case, for at least one year after the person had stopped taking LSD. The studies reported in Oregon were that they had this damage in infants of from six to eight months. We do not know what the long-term issue is. We do not know whether this type of damage will result further in deformities or make these people infertile. We just do not know what it will do.

Senator Thorvaldson: This drug seems to be much more dangerous than narcotics such as heroin, is that right? Would you compare them as to their being a menace or danger?

Dr. Hardman: I think that, if one takes the risk-benefit ratio, the majority of narcotics have a role in medicine—in other words, there is a role. There is a social and a physical danger to the individual who uses narcotics illegally or illicitly. With LSD there would appear to be now, from the evidence appearing, a social, a psychological and a physical danger in the use of LSD, and this does not appear to be compensated by any real medical use for it. All drugs are dangerous. It is difficult to equate the danger. One has to say: "If I use a drug, it is dangerous, but how much benefit might a patient expect to receive from it?" Our evidence with LSD is that it is not a major breakthrough in medicine.

The Chairman: Doctor, would you compare, for instance, the immediate effects or results to a user of LSD as compared to a user of marijuana or heroin?

Dr. Hardman: Yes, sir. With all of those used illicitly, initially the danger is one of a

temporary escape from the problems the individual has at the time. Then he comes back and the problems are still there. In each of these cases the difficulty comes with repeated usage, where the person becomes psychologically dependent on the drug. In the case of narcotics he also becomes physically dependent on the drug. With the use of LSD or marijuana, however, he does not become physically dependent. By "physically dependent" I mean that he requires increasing dosage and when he stops using the drug then he has physical symptoms of withdrawal.

The additional problem with marijuana and LSD—more so with LSD than with marijuana—is the risk of psychological breakdown, psychotic behaviour resulting from the use in an unstable individual. And with all of these drugs there is a social problem of the person under the influence of the drug injuring himself or someone in his environment.

Senator McDonald (Moosomin): I take it from your evidence that there is a great danger in the use of LSD even under controlled conditions?

Dr. Hardman: Yes, sir. This evidence appears to be developing. We have had reports from the Ontario hospital system, and from Edmonton, that psychiatrists are suspending the investigation of LSD in their practice until the genetic picture is further clarified. At least two clinical investigators have been concerned by the reports in the laboratories.

Dr. Sullivan: Dr. Hardman referred to this latest publication which has come from the University of Toronto press. You asked a specific question, Mr. Chairman, in regard to those who might be susceptible to this drug. On page 11 of this book, "Lysergic Acid Diethylamide (LSD) in the Treatment of Alcoholism" by Smart, Storm, Baker and Solursh, there appears this statement:

"...there are few complications when the drug is given to 'normal' subjects in the course of experimentation and most complications appear during therapeutic or non-medical use. The actual number of such complications is unknown at present—"

And this is my point—

"—but most of them appeared in pre-psychotic persons or in those with a family history of psychosis."

I intend later, with the permission of the Chairman, to put on the record the type of individual that is susceptible to the taking of this drug.

The Chairman: Could a healthy, stable, individual who uses LSD quit at any time without any ill effect?

Dr. Hardman: Yes, sir.

Senator Burchill: Is it used in the medical profession? Is it prescribed?

Dr. Hardman: No, sir. The status of LSD in Canada is that it is permitted for limited clinical investigation by psychiatrists, in institutions approved by the Minister of National Health and Welfare.

Senator Thorvaldson: You have had experience now for quite a few months, since this bill was previously before the Senate and before this committee. Would you indicate what experiences, if any, you have had in regard to the growth or increase in the use of this, or any things that have happened in the trafficking of the drug since that time?

Dr. Hardman: Might I defer that question to Inspector Macauley?

The Chairman: Inspector Macauley is here and he will develop that aspect.

Senator Molson: It has been reported in the newspapers that a practice has been developing of introducing a habit-forming drug into marijuana in some cases in order to get the innocent marijuana smoker gradually addicted. I would like to ask the doctor if there is any indication that any such thing has been done with LSD?

Dr. Hardman: Not to my knowledge, sir. The administration of LSD is usually in a liquid form. Perhaps Inspector Macauley will speak of this later, but the report was of the use of heroin in marijuana, because one of the forms of using heroin commonly in the Orient is to smoke it, and I have no direct knowledge that this has taken place. Perhaps the inspector has. I have no reports of cross-contamination with narcotics into LSD.

Senator Molson: I would like to ask one other question. In some of the articles that have been written there is quite frequent mention of the fact that the LSD that is so often obtained surreptitiously by young people is not pure. Have we any ideas of the possibilities of damage to the individual from

the impurities that may be in this type of LSD that they obtain.

Dr. Hardman: No, sir. We have no control studies of this. In the preparation of LSD illicitly, from the reports that have come to us from the United States, the actual active ingredient is about 10 per cent of the material present. The contaminants that are present have not been characterized completely and there have been no toxicological studies carried out on it to my knowledge.

The procuring of this type of material for scientific investigation is difficult, because it will vary from one illicit batch to the next. You just do not get enough to carry out controlled studies.

Senator Molson: You would suspect, then, that from batch to batch the contaminants or the other elements would be different.

Dr. Hardman: This is quite possible, sir. I can only quote the opinion of a doctor in Saskatchewan, Dr. Hoffer, who had been in closer contact with actual illicit users than myself. He felt that perhaps some of the adverse psychological reactions he encountered might be attributed to the contaminants. I am only quoting his opinion, sir.

The Chairman: Do the contaminants occur when you are seeking to get this drug LSD, or are they added by way of diluting?

Dr. Hardman: No. Generally, sir, they are part of the chemical process.

The Chairman: Oh, I see.

Dr. Hardman: They are contaminants resulting from the chemical process that produces the LSD but which are not removed. In other words, the drug is not purified subsequently.

The Chairman: I see. Have you any other questions to ask Dr. Hardman? Thank you, doctor. Shall we hear Inspector Macauley now? Inspector, would you bring us up to date on your experiences since we had the pleasure of hearing you last April?

Inspector J. A. Macauley, Criminal Investigation Branch, Royal Canadian Mounted Police: Thank you, sir. Ladies and gentlemen, from the enforcement point of view there has been very little change in the situation so far as LSD is concerned since our last meeting here in April of this year. We are still encountering LSD in the street in connection with other investigations. We have found a

number of persons in possession of LSD. Also, in our undercover investigations to do with other narcotics, our undercover men have been able to make purchases of LSD from the illicit sources.

Senator Thorvaldson: You say they have been unable?

Mr. Macauley: They have been able to.

Senator Pearson: Is there any particular age of people peddling this stuff?

Mr. Macauley: Yes, in the early twenties, sir.

Senator Pearson: In the early twenties, I see.

Senator McDonald (Moosomin): You say your undercover agents have been able to make purchases. Are they from the people who are normally associated with the peddling of other drugs, narcotics?

Mr. Macauley: That is correct, sir. Our undercover investigators are primarily concerned with other narcotics, the hard narcotics and marijuana, and through these contacts they find LSD has entered the stream.

Senator McDonald (Moosomin): It is much the same people.

Mr. Macauley: That is correct, sir.

Senator Thorvaldson: I am still at a loss, Inspector Macauley, as to why—and I raised this subject the last time you were before us—this legislation is not handled under the Narcotics Act rather than under the Food and Drugs Act. I think a reason was given, but would you restate that, or have you found since that there are different reasons perhaps for now bringing this under the Narcotics Act?

Mr. Macauley: So far as our department is concerned, sir, I cannot answer that question.

The Chairman: You are not in administration.

Mr. Macauley: We are in the enforcement end of it, sir.

Senator Thorvaldson: You are in the enforcement end under the Food and Drugs Act.

Mr. Macauley: Under the Food and Drugs Act and the Narcotics Act.

Senator Thorvaldson: And the Narcotics Act?

The Chairman: Oh, yes.

Mr. Macauley: Yes, sir, that is correct.

Senator Fergusson: May I ask in what form the LSD is purchased by your undercover agents?

Mr. Macauley: It is mostly in sugar cubes—there is a drop of liquid placed on a sugar cube—but it can be in capsule form as a powder.

Senator Fergusson: How do you determine it is there? By analysis?

Mr. Macauley: Our investigators, over a period of time, have come to recognize situations. If a person has these sugar cubes wrapped in a certain way or in a certain storage place in a residence or, if commonly walking along the street, he has them wrapped in silver paper in his pocket, then these are all telltale marks to our investigators.

Senator Thorvaldson: From your experience in your work during the last few months, what would you say that your inspectors do when they come into contact with these situations? Have they any power to arrest a person or seize him under any present legislation, or are you waiting for this bill to be passed?

Mr. Macauley: In cases where there is an offer for sale and members have been able to purchase, prosecution is entered; where there is straight possession, we have no authority.

Senator Thorvaldson: But under what Act do you have authority now in the case of the sale or trafficking?

Mr. Macauley: The Food and Drugs Act.

Senator Thorvaldson: I see.

Senator Gershaw: Inspector Macauley, where do the young people who use this drug obtain it? What is their source? Where does it come from?

Mr. Macauley: That is a difficult question to answer, sir. We have never been able to get to the source here in Canada.

Senator Molson: Mr. Chairman, there is a current article in the *Saturday Evening Post* on the Mafia in England that is quite interesting. In the course of that article it men-

tions that the Mafia are moving into the manufacture and distribution of LSD. I would like to ask the inspector if he thinks that has any credence so far as the experience in the force is concerned.

Mr. Macauley: There is no indication of it at the present time, sir, but, if there is a profit involved, I see no reason why they would not move in.

The Chairman: Are there any other questions you want to ask the inspector. Inspector, would you say from your experience, since you were before us last, that the volume of users is increasing?

Mr. Macauley: I would say it is fairly constant, sir.

The Chairman: By the addition of new people or repeaters?

Mr. Macauley: There are new people being involved in this all the time.

The Chairman: This is something that you can move in and out of, is it not? It is not habit forming in the same way as heroin, for instance?

Mr. Macauley: That is my understanding. There is a difference between LSD and heroin.

Senator Thorvaldson: For what period of years has LSD been a known menace?

Mr. Macauley: It first came to our attention to any extent about 1963 or early 1964. That is just a guess.

Senator Baird: And you do not know the source or supply?

Mr. Macauley: As I say, sir, we have not reached the source of supply here in Canada.

Senator Thorvaldson: You have not discovered any place where it is manufactured in Canada illegally?

Mr. Macauley: Not in Canada, no.

The Chairman: Are there any other questions?

Senator Isnor: In what sections of Canada have you found violations of this Act?

Mr. Macauley: Right across Canada: in Vancouver, on the Prairies, in Toronto and in Montreal. It takes in, I would say, from Montreal right to Victoria.

Senator Fergusson: Is it found in the Atlantic provinces at all?

Mr. Macauley: Very, very little, if any. I cannot think of any offhand.

Senator Gershaw: How long does the effect last after a person has taken LSD? How long does it stay in the system or how long does it last?

Mr. Macauley: This is another question which I cannot answer.

The Chairman: Perhaps Dr. Hardman could answer that. How long would you say that you find evidence of the use of this in the system after it has been taken, Dr. Hardman?

Dr. Hardman: One of the difficulties is that you can only detect it chemically in the system within less than 30 minutes after its administration. However, the effects may go on. They begin in one to two hours. They usually last up to 12 hours. They may go on for a period of time and then recur at a later date. But you cannot detect it as you could alcohol by any physical or chemical method in the body for 30 minutes after administration.

Senator Beaubien (Bedford): Inspector, have you read Bill S-21?

Mr. Macauley: No, I haven't. I don't have a copy.

Senator Beaubien (Bedford): Would it not be important for Inspector Macauley to read this bill, Mr. Chairman? Would that not be a help?

The Chairman: He indicated that at the present time they can arrest a person who is offering for sale, but they cannot arrest any person and charge him for being in possession. This bill makes possession an offence.

Senator Beaubien (Bedford): It seems to me very important that the bill should be read by the people who will be trying to enforce this. Should they not be consulted and asked to tell us what they think about it?

Senator McDonald (Moosomin): I presume the Department of Justice had a good deal to do with the drafting of this bill, and while I understand that Inspector Macauley might not have been consulted I would be very surprised if there were not other persons engaged in law enforcement who were consulted on this.

The Chairman: I just told the Inspector that this is the same bill as we had before us last time.

Mr. Macauley: I did not have a copy this morning, but I did have a copy at the last appearance here in April of this year.

Senator Beaubien (Bedford): Your department is satisfied that this is what you want?

Mr. Macauley: That is correct, sir.

The Chairman: Senator Sullivan, you had a statement you wanted to make.

Senator Sullivan: Mr. Chairman, honourable senators, I have spoken on this bill on two different occasions, and as a result of my last talk a number of senators have said to me, "Dr. Sullivan, is there any particular type of individual that is susceptible to the taking of this drug?" Now, I may say that in two addresses—and I spoke strictly from a medical point of view—I did not include that. I have been vitally interested in this problem because many of these cases have been seen in connection with auditory hallucinations; that is, disturbances in the ear and ringing in the ears, and so forth. I discussed this over the weekend with my colleague, Dr. Henry Berry, Research Fellow in Neuro-Psychiatry, St. Michael's Hospital, Toronto. We came up with a statement which, with the permission of the chairman, I should like to put on the record. It is as follows:

There is no adequate scientific study of the possible factors, psychological, cultural, etc., that may be responsible for the increasing use of LSD.

One cannot single out a certain personality type that will lead to LSD experimentation.

Speaking more generally, with these reservations in mind, the following statements could be made:

1. The users are usually within the adolescent and early adult age group.
2. They are different family backgrounds but often the conventionally satisfactory middle class background and family life, is noted.
3. The use appears part of the experimentation of youth, often related to a yearning for novelty, excitement, a heightened artistic, religious, or other mystical experience. The person of poetic, literary, dramatic or other creative aspirations may take the drug

in an attempt to improve his creative abilities.

4. The wide discussion and public interest generated by journalists, television and film media appear to have played a role. Huxley in the "Doors of Perception", stated O'Leary and others have in some way given this drug a respectability for the person of artistic and religious feeling.
5. The relative ease with which the drug can be obtained, albeit illegally, has also contributed to its use.

There is no indication that psychiatric treatment or counselling is of any value in preventing the use of this drug or in causing the practice to be discontinued by those who use it more or less regularly. Psychiatric treatment, however, usually of an institutional type, is required in those cases where panic states or frank mental illness results from the use of the drug.

I think we could say that is a summation of the medical and scientific knowledge of today in respect to the type of individual that is most likely to take this drug, and as I have stated before this is a medical problem, in my humble opinion, and not a legal one.

The Chairman: Since there is a reference in the course of the inspector's evidence to the present law and so that there may be a statement as to what it is at the present time, section 14A of the Food and Drugs Act provides that no person shall sell any drug prescribed in Schedule H. One of the drugs prescribed in Schedule H is LSD. There is the authority and the limit of authority which the law enforcement officers have at the present time. This bill does create the offence of possession which does not exist under the present law, and we find that in the proposed section 40 of the bill before us.

Senator Smith (Queens-Shelburne): Is not the legislation strengthened by making it an offence to traffic within the full meaning of the word "traffic"? I understand that under present legislation the R.C.M.P. have to deal with selling and not with trafficking.

The Chairman: Then you get into the distinction as to whether "trafficking" is a broader word or a more restrictive word than "selling". Could you have selling that is not trafficking?

Senator Smith (Queens-Shelburne): Well, trafficking could include transporting, which selling might not.

The Chairman: I think trafficking is the broader word, and is one that is well known in our drug laws. The only difference here is that if you are charged for a violation under section 40, subsection 2, which makes possession an offence, then there is a trial to determine whether you are in possession or not, and if you are found to be in possession then the onus is on you to establish that you are not in possession for the purpose of trafficking.

This is strengthening the law; there is no doubt about it. It is flying in the face of some concepts we have about a person being innocent until he is proven guilty, but we are told that the end here would appear to justify the means.

Senator McDonald (Moosomin): In view of your final statement, Mr. Chairman, may I ask this question? Is the wording here not the same as it is with regard to the possession of dynamite or explosives?

The Chairman: Frankly, without looking it up, I could not tell you. It would be in the Criminal Code.

Senator McDonald (Moosomin): It is my understanding that it is the same wording as the section in the Criminal Code dealing with explosives.

The Chairman: Do not misunderstand me. I was just making a statement as to what the effect of the bill was. I was not expressing a view against this provision of the bill.

Senator Burchill: Mr. Chairman, we went all through this bill in April, did we not?

The Chairman: That is right.

Senator Burchill: Are there any changes in this bill compared to the one we considered in April?

The Chairman: The only change, I believe, is that we added during the committee stage a provision with respect to promotion.

Senator Burchill: Is that contained in this bill?

The Chairman: No.

Senator McDonald (Moosomin): There is a change in section 44, Mr. Chairman.

The Chairman: I think it is only a technical change to do with the certificate of the analyst.

Senator McDonald (Moosomin): Yes.

The Chairman: But, by and large, if you consider what we did in committee last time and forget that addition, the bill is, to all intents and purposes, the same as the one we had before us last time. Would the committee care to have any discussion on this other aspect? Senator Molson, have you anything you want to put forward in relation to the amendment made last time which is not incorporated in this bill?

Senator Molson: I somehow found myself the "godfather" of that amendment last time, I am not quite sure how, but the fact does remain that this bill provides penalties for and the means of prosecution of those who traffic and those who use the drug or are in possession of it. But, as I suggested last spring in committee, in my personal opinion and, I think, that of some other senators, the individual who is far more anti-social and far more harmful is the one who promotes the use by the young of this or any other harmful drug. We seem to let that individual completely off. We tried to put this amendment in about promotion, and we had this extreme attitude from some of the press that we were trying to muzzle the press or the news media, which, of course, was never the intention of this committee nor myself. In fact, I think the Senate and its committees have shown the greatest desire to preserve all the freedoms of the individual and of the press, but I think that we should give very careful further consideration to whether we cannot control these people who stand up and freely advocate the use of LSD, amongst other things, and put them in a position in which they cannot do this without committing an offence.

Quite frankly, I was surprised at the reaction to our proposed amendment last time, because I think it is generally considered anti-social to advocate murder or rape or any other offence of that sort, and yet this is freely discussed at all times in the press and on the radio and television. Quite honestly, I cannot see any reason why in aiming at the individual who promotes we should, in any way, limit the freedom of expression on the general subject. It seems to me it would be no different from preventing someone going around and inciting a riot, which, as I understand it, is an offence.

So I think we ought to consider an amendment to the bill, being careful not to, in any sense, limit the freedom of expression, the freedom of the press or news media, but making it an offence to recommend or to incite others to traffic or use improperly LSD.

The Chairman: The difficulty, senator, I think arose over the meaning of the word "promote". It may be the use of the word "promote" was wrong in the circumstances. I note that today in your explanation you speak about "encouraging the use" or "advocating the use". This is the sense in which "inciting to riot" would become an offence.

Senator Molson: Mr. Chairman, to try to bring it to a head and have it put on the table, I have a draft of a proposed amendment to section 41, in clause 2. I say here that I do not think the wording is perfect, but it will bring it before us for discussion. I would move:

That section 41, of clause 2 be amended by adding thereto the following subsections:

(4) No person shall act or profess to act as the leader or as one of the leaders of any cult or other group of persons advocating trafficking or improper use of a restricted drug;

(5) Every person who violates subsection (4) is guilty of an offence and is liable, upon summary conviction,...

—and here I think it is out of my field. I think the penalty should probably be the same as that for possession, which to my mind is a lesser offence. In fact, it seems to me that, if anything, the penalties for possession are rather harsh, and I think promotion is a little more serious an offence. I would rather see the person advocating it receive a severer penalty than some youngster who is caught for the first time.

The Chairman: One thing that strikes me right away is the use of the word "leader"—whether it should not be broader and should say, "the leader, or one of the leaders, or a member of..."

Senator Molson: This is open to discussion, Mr. Chairman. I have no strong views on it. I just feel we should try to get at these people who gather the young around them, who make this thing fashionable and would lead your grandchildren or my children or grandchildren, or whatever it may be, to the use of

this drug where normally they would not do so.

The Chairman: Very often when you are trying to accomplish a good purpose, sitting right here in committee you have not the time to settle on the language to achieve the best result. You may end up by producing something and enacting it that is less than desirable because it has too many fringes that can create problems. That might have been the cause of the difficulties in the use of the word "promote" the last time the bill was before us.

Senator McDonald (Moosomin): It is too widespread?

The Chairman: That is right. I was wondering if we could appoint a subcommittee to study the language of this proposed amendment and report back to this committee. The subcommittee might work in conjunction with Mr. McCarthy, the legal counsel for the Department of National Health and Welfare, and a representative from the Department of Justice. We would not need to take very long about it. We would certainly be ready for the next meeting of this committee. Is that satisfactory? It is important, I think, that this bill leaves our hands as quickly as possible and goes to the House of Commons, and becomes the law of the land.

Hon. Senators: Agreed.

The Chairman: Then, subject to such amendment as may be brought in by the subcommittee, do we otherwise approve of the form and content of the bill? I ask this so that we do not have to come back and discuss it.

Hon. Senators: Agreed.

The Chairman: I think Senator Molson should certainly be a member of the subcommittee.

Senator Molson: The subcommittee should be composed of our legal talent.

Senator Smith (Queens-Shelburne): There should be somebody to keep the subcommittee in line.

The Chairman: It should be composed of four or five members of this committee.

Senator MacKenzie: Mr. Chairman, on a point of information, did the House of Commons turn this bill down or did the bill die on the Order Paper?

The Chairman: I think it died on the Order Paper of the House of Commons. I do not know whether it can be said that that was

intended, but in any event it died at the end of the session.

Senator MacKenzie: Was there evidence of opposition to it in the House of Commons?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel, the Senate: It did not reach the House of Commons. It was not given third reading in the Senate. It died on our Order Paper at the close of the session.

Senator Sullivan: May I interrupt for just a moment, Mr. Chairman?

The Chairman: Yes.

Senator Sullivan: Senator Walker spoke to you last spring about the legal aspects of this as well.

The Chairman: Yes. I think the subcommittee should be made up of Senator Walker, Senator Thorvaldson...

Senator Pearson: And yourself, Mr. Chairman.

The Chairman: Very well—and Senator Molson. We must have somebody outside the law. I mean that in the nice sense of the phrase.

Senator Molson: I will not comment.

The Chairman: Senator Croll has taken some interest in this, so perhaps he should be a member of the subcommittee. If it is agreed, there will be that subcommittee of five members of this committee, which will go to work on it right away.

Hon. Senators: Agreed.

Senator Molson: Would it be wise to ask our witnesses whether they have any feelings on the matter?

The Chairman: Yes, let us have the view of Mr. McCarthy, the legal adviser to the department.

Mr. J. D. McCarthy, legal adviser, department of National Health and Welfare: Mr. Chairman, I take it Senator Molson is referring to your suggested amendment—or, is it the former idea?

Senator Molson: The former one.

The Chairman: First of all, let us take the former one.

Mr. McCarthy: Well, on the former amendment which, it has been said, has disappeared—of course, I am not in a position to say why it has disappeared, but I can say that during the months since this was before

this committee the last time there has been a great deal of discussion and consideration given to the possibility of adding to this legislation a provision such as the senator has suggested. The difficulties from the standpoint of drafting, and the basic constitutional standpoint, seemed so tremendous as to be impossible to overcome. We got into all sorts of areas; not just the question of the freedom of the press, which is really a minor difficulty. We had to consider what we meant by "promotion".

When I was here before I intimated that it would probably be necessary to introduce a definition of "promotion" into this bill, and this has become, in our view, almost impossible for the reason that even the scientific treatment of the subject, for instance, seemed to exhort us to stay clear of this thing entirely. The publicity effect might be a promotion in one sense. This is why the general idea of trying to legislate in connection with "promotion" *per se* would be pretty difficult.

The Chairman: I am thinking out loud but what that means is that the word "promotion" is the wrong word.

Mr. McCarthy: Perhaps.

The Chairman: But, there are many other words in the English language. Perhaps we can find one or two others.

Mr. McCarthy: Then, of course, with respect to the new suggestion which will be considered by the subcommittee that is being formed, I can only say that after examination it is possible that this too may be found to be not completely appropriate. We appreciate fully Senator Molson's views—at least, I do—and I am trying to see how they can be implemented for the purpose you suggest.

Senator Molson: Would you not agree that the individual who engages in promotion should be more of a worry to us in the country than the individual who gets caught up in the odd LSD trip?

Mr. McCarthy: Certainly, the person who promotes it is the sort of person we would hope to be able to control, but the same thing applies to some other offences. There are, of course, provisions against aiding and abetting, and that sort of thing.

The point I am trying to make is that in this instance only, and in connection with this particular drug, we are attempting to define a new offence. It may be possible to do so, and so get over this fringe area of persons

who are really pushing this thing, and who are not merely traffickers.

Senator Molson: Is not inciting to commit a crime an offence?

Mr. McCarthy: Yes, it is, and probably we do not need some specific legislation for this particular offence.

The Chairman: And conspiracy to violate any criminal law is an offence, so you have those elements now.

Senator Molson: We have those elements, except that I think one would be led to believe that the use of those particular elements in respect of this Act is not so easy. The laying of such a charge is not a common occurrence.

Senator Smith (Queens-Shelburne): Do I take it then, Mr. Chairman, that the witness believes, along with Senator Molson and a great many of us, that we want a search made in order to find a way of preventing a whole group of Tim Learys growing up in this country? If that is so, are you not telling us, having had all of the summer to think over the problem, that you cannot come up with a legal way of dealing with future Tim Learys?

The Chairman: No, I do not think he went that far.

Mr. McCarthy: May be I am wrong.

The Chairman: I think he went so far as to say that the word "promote" was not a word that we can use because of the extensive meanings that are given to it. I do not think there is such a shortage of words in the English language that we cannot find an appropriate one, once we are clear as to what we want to do. I suggest that we have a good try.

Senator Smith (Queens-Shelburne): Mr. Chairman, I would think that the mere fact that there is no mention in this bill of anything that attempts to do what Senator Molson and I and others would like to have done indicates that they cannot find a word...

The Chairman: They are leaving it up to us, and we will try to find one.

Senator Kinley: Mr. Chairman, could idle talk be considered promotion?

The Chairman: I think we are agreed that "promotion" is not the word we are looking for. There must be another word that describes what we want to do, and we will find it. Is it agreed that we adjourn further consideration of this bill?

Senator McDonald (Moosomin): I so move, Mr. Chairman.

The committee then proceeded to the next order of business.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 9

First Proceedings on Bill S-18,

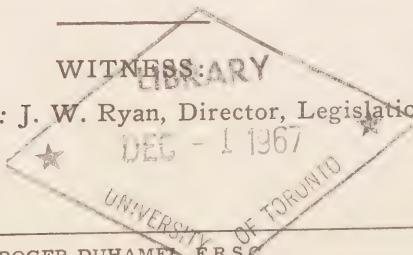
intituled:

“An Act to amend the Publication of Statutes Act”.

WEDNESDAY, NOVEMBER 8th, 1967

WITNESS:

Department of Justice: J. W. Ryan, Director, Legislation Section.



ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(48)
Flynn		

Ex Officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 2nd, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Deschatelets, P.C., for second reading of the Bill S-18, intituled: "An Act to amend the Publication of Statutes Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 8th, 1967.

(10)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.45 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Beaubien (*Bedford*), Benidickson, Blois, Burchill, Croll, Fergusson, Gershaw, Irvine, Isnor, Kinley, MacKenzie, McDonald, Molson, Pearson, Smith (*Queens-Shelburne*), Thorvaldson and Walker.—(20)

Present: but not of the Committee: Honourable Senator Sullivan.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and, Chief Clerk of Committees.

On motion of the Honourable Senator Baird it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-18.

Bill S-18, "An Act to amend the Publication of Statutes Act", was read and considered.

The following witness was heard:

Department of Justice: J. W. Ryan, Director, Legislation Section.

The questions having gone beyond the Bill into matters of policy, Mr. Ryan was excused and it was agreed that further consideration of the said Bill be adjourned until the Minister of Justice was available for questioning.

At 11.10 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 8, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-18, to amend the Publication of Statutes Act, met this day at 10.45 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators, as Bill S-18 originates in the Senate I think we should have a verbatim report. May I have the usual motion?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: We have Mr. J. W. Ryan of the Department of Justice here. Mr. Ryan, would you explain briefly the scope and purpose of this bill.

Mr. J. W. Ryan, Director, Legislation Section, Department of Justice: Mr. Chairman and honourable senators, the short purpose of this bill is set out in the explanatory note. By way of extension of that I should explain that the provision to which we wish the amendment made is section 11. Section 10 is an incidental or ancillary amendment to section 11.

Section 11 was in its origin in 1867, by chapter 1, the Interpretation Act, a direction to printers, and the language was printers' language. In the original section they used picas and points, and even ems. Subsequently, in 1925 the provision was changed and gave terms translated into inches, as we now have it in our statutes.

The Statute Revision Commission is studying the statutes, and under the act, chapter 48, 1964-1965, they may prescribe a form that

they consider desirable for the statutes. In reviewing the possibility of the Statute Revision Commission coming out with a form of statutes which differs from the annual statutes, it was thought desirable that the direction under section 11 be made more flexible so that if it were necessary the Governor in Council could prescribe a form which would permit the annual statutes to correspond with whatever form the commission came out with. That is the simple purpose of the amendment.

The Chairman: Senator Walker, you are interested in this. Have you anything you want to ask the witness or that you would like to say at this time?

Senator Walker: I should like to ask a few questions. As I understand it, we now have the Revised Statutes of Canada in either French or English, whichever you prefer. Is that correct?

Mr. Ryan: They are in both forms, in separate volumes.

Senator Walker: I understand that under this Act we will not be able to get the statutes in English only. Is that so?

Mr. Ryan: Not by the effect of the amendment. By whatever direction or decision is made pursuant to that amendment subsequently.

Senator Walker: Subsection (1) of section 11 says:

Subject to this section, the statutes shall be printed in the English and French languages in such form, on such paper and in such type...as the Governor in Council may prescribe by regulation.

The Chairman: Senator, if you look at subsection (3) you will see the answer supporting what you have said.

Senator Walker: Exactly. Subsection (3) says:

The statutes of each session shall be bound, if practicable and convenient, in one volume.

Would that not be in French and English in one volume?

Mr. Ryan: As I read that, if the statutes came out in English and French, as they will, and they were not combined in any form in the annual statutes, then I suggest it would not be practicable and convenient to put them in one volume; the volume would be much too large. We do not read it as restricting it to bilingual—if I could use that expression—annual statutes.

Senator Walker: Nevertheless, whatever is printed will have on one page English and on one page French.

Mr. Ryan: Not necessarily. This would be to anticipate.

The Chairman: Senator Walker, if you look at, for instance, the Quebec Statutes at the present time you will find a line down the centre of the page, on the left-hand side of which you have the French version and on the right-hand side the English, on the same page.

Senator Walker: Is that what you propose to do here?

The Chairman: That is what I am wondering.

Mr. Ryan: I cannot, of course, anticipate the final report of the commission, but at the moment the commission is considering the Quebec method, if I may use that expression. May I explain that so far as the commission—

Senator Walker: Before you do that, could you tell us of what commission you are speaking?

Mr. Ryan: The Statute Revision Commission. It examines bilingual areas where they issue statutes, in Europe and in Africa. The Irish, Swiss and South African are all officially bilingual or trilingual. The South African method is to have one language on one page and the other language on the other page. This we call the facing version. The Swiss use what we call the Canada version at the moment, which is separate volumes for their three languages. The Irish use the South African method, the facing pages.

The method the commission appeared to favour at the moment is the Quebec one. They are not being chauvinistic. It is convenient; it does not extend the volume beyond a quarter, whereas the South African method doubles the number of volumes. It gives you a very extensive library for revision. It appears at the moment that the Quebec method may be the one adopted by the Statute Revision Commission. If it is, it may be desirable to use the same method for the annual statutes, but the Publication of Statutes Act at the moment inhibits that decision and the amendment is being sought for that purpose.

Senator Walker: That is why you want the amendment?

Mr. Ryan: That is right.

Senator Walker: If on the same page you have French on one side and English on the other, would that not take up double the space of having one volume in French and another volume in English?

The Chairman: There might be a 50 per cent increase.

Mr. Ryan: May I answer that?

The Chairman: Yes, certainly.

Mr. Ryan: Our information—and, of course, we take this from Quebec and from our printer's estimates—is that the increase by this method would be one quarter, or 25 per cent.

Senator Walker: How could that possibly be. That is your information, but I have seen the statutes and there are six volumes now, which take up a lot of space in an ordinary lawyer's office, in English.

Mr. Ryan: There are actually 12 volumes, sir.

Senator Walker: I was saying in English.

Mr. Ryan: Six volumes in English and six in French.

Senator Walker: I am speaking of the English at the moment. If there are six volumes in English and the two of them are combined so that we cannot buy our statutes either in English or in French, we must buy them combined, how can you boil down 12 volumes—

Mr. Ryan: Well, senator—

Senator Walker: Do not jump the gun. It is very kind of you, I know, to try to help, but how can you boil it down to $7\frac{1}{2}$ volumes by printing in French and English in the same volumes? How can you do that?

Mr. Ryan: If we use the conventional type size in the first instance, which is 10 point, agreed upon by the Uniformity Conference a number of years ago—we now use 11 point in our statutes—we have a saving on type print size. If we use a technique developed in the provinces, of putting schedules and forms in a small-sized type—we have a considerable number of pages and schedules in our statutes—and then enlarge our page slightly and our volume slightly, it is estimated for us that the increase will be 25 per cent, approximately.

Senator Walker: That is because you changed the type of your printing. I am suggesting to you that, if you leave the printing the way it is at the present time, with the same type and the same layout, it will be twelve instead of six. That is, if you leave it the same as it is at present.

Mr. Ryan: We could not use it the same as it is at the present time, because it spreads too wide over the page. We have to narrow the width of the print.

Senator Walker: Quite so, but supposing that you did leave it the same—it would be twice as wide? Or supposing you did print the English separate and French separate, on this new type of printing you are suggesting, you could greatly reduce the volume in English and greatly reduce the volume in French, if you reduced the size of the print?

Mr. Ryan: You could. Even if you leave the Canada method in use, you could reduce the size of the volume by using a different size print for the schedules and reducing the size—

Senator Walker: In other words, by reducing the size of the print you could reduce the size of the volume, but if you print English and French together you are almost doubling the size of the printing?

Mr. Ryan: Not if we use the two-column width. This has been worked out for us.

Senator Walker: That is because of the new method of printing. We all agree you are going to reduce the size of the printing. Still, is not the French wording the same as the English, in the space it occupies?

Mr. Ryan: Actually, it is a little longer in the French. You have to “cheat” pages—which is a printer's term—to make the English and French match.

Senator Walker: That is my understanding. Therefore, there are twice as many words to put in a volume, whatever size it is, than if you had the English version alone and the French version alone. Is that not common sense?

Mr. Ryan: This is what I had originally thought, that we would be into difficulties as to the number of volumes.

Senator Walker: We are not talking about that, but about the number of words printed.

Mr. Ryan: The number of printed words will be the same.

Senator Walker: All right, exactly. If you boil it down, you can boil it down in English and in French?

Mr. Ryan: You can reduce the size of the type in English and in French and compress things.

Senator Walker: Then why would you want to print the Revised Statutes of Canada in such a way that one has not any alternative and one has to buy it in both French and English?

The Chairman: I am wondering if we are getting close to a question of policy.

Senator Walker: I wanted to know.

The Chairman: I wanted to stay away from that, because we should not ask this of the witness. If he is instructed that the statute is to be drawn in such a form, that they considered all these various ways of dealing with it, then he is told to put the legislation in the form to do that. He might answer all the questions we may ask except that one as to why you consider that one way of doing it. I think that is a question of policy and we will have to get the Minister on that, surely.

Senator Walker: Then we want the Minister. There are over 6,300 lawyers in Ontario and all of them were educated at Osgoode Hall in these statutes, and I doubt whether there are 100 lawyers in Ontario who are French Canadian. In all my experience at the Bar over thirty-six years, in the Supreme Court of Ontario and in the Supreme Court of Canada, I have never had occasion to look at the French version of the statutes. I am

not an international lawyer or an interprovincial lawyer. I am wondering why we should increase this and be forced to buy twice as much printing in the Revised Statutes as we have done in the past. This is the question I would like answered. What is the advantage of it? How many lawyers across Canada, other than in Quebec, have need of the French version? In Manitoba there are a few hundred. There are none in Saskatchewan, Alberta or British Columbia that I know of. There are some in New Brunswick, and of course there are many in Quebec. This being so, where is the advantage of this? How does it help us as lawyers?

The Chairman: Senator, could I summarize this? If we apply all the savings that have been indicated—the savings through smaller print, a little larger page, and then the printing of the schedules in some fashion where they take up less room—and if you retain the French and English volumes separately, you would accomplish very substantial savings.

Senator Walker: That is it.

The Chairman: I doubt if the savings by printing on the divided page, French and English, would add anything more to it. If you are looking at it from the point of view of savings, you can still keep the French and English versions separately, and incur these economies, if that is what you are looking for.

Senator Walker: That is right. That is what I am looking for.

The Chairman: So that, as against doing that, the decision is to follow the divided page, and it is difficult to follow at the moment.

Senator Walker: Exactly. The main point is, are you going to apply it to our Revised Statutes of Canada, which are too cumbersome even now, instead of the way we now provide for both French and English?

Mr. Ryan: I would answer that, because of the report of the commission—

Senator Walker: We have no chance to decide that?

The Chairman: If we approve this bill in the form in which it is, that decision, which has not been made up to the present, might be made by the Governor in Council by regulation. It is beyond our reach then.

Senator Walker: That is a matter of great interest, in my opinion. This affects the Bar of Ontario who have their desks and shelves filled, as you know, Mr. Chairman, with all sorts of volumes of one kind and another. Then, to have this thing thrown on them, without any alternative—

The Chairman: There is a very simple addition of a few words that would accomplish what you are seeking.

Senator Walker: Let us have it.

The Chairman: If you added the words "in separate volumes". That is to say, that the statutes shall be printed in the English and French languages in separate volumes, in such form and such paper and such type, etc.

Senator Thorvaldson: Yes.

Senator Walker: I would move that.

The Chairman: What I would like to do—this is not a political controversy that we are starting.

Senator Walker: This is legal, purely legal. As far as the French are concerned, everyone who knows me knows my interest in them. We now have a French Canadian leader. But lawyers are surrounded by all sorts of volumes, and in my thirty-six years at the Bar we have never had to look at the French version. I have been at the Supreme Court of Ontario a great deal, as you know, and at the Supreme Court of Canada; and if I never had occasion to look at the French-Canadian version, why should I and 10,000 lawyers across Canada who do not speak and do not understand French and never have occasion to look at the volume, why should we have it imposed on us, as a necessity, having these in one volume with one column French and the other column English. In Quebec, fine! And in New Brunswick, fine! And if we ever have occasion that it should happen in Ontario, fine; but of 6,300 lawyers there are fewer than 100 French Canadians, and all of them are very fluent in English. We have in our library now the French version, which we can get at a moment's notice. I would like to see an amendment, and if there is some good reason that I do not know of now, you can change it back to what it is at the present time.

The Chairman: I will tell you what I would suggest for your consideration. Before we lock this in with the additional words I mentioned, and then send the bill on, and

possibly provoke some controversy, we should have the Minister here.

Senator Walker: Very good.

The Chairman: I think that is the way to deal with it.

Senator Walker: I may be in the dark. I may be unreasonable in asking the question, if the present witness does not know the reason for this, or has no knowledge of policy, and I presume he has not.

Mr. Ryan: Senator, one reason that comes to mind is the fact that, unless one has the two versions, one does not have the complete statutes; and many law offices in Canada do not have the complete statutes of Canada. As you know, both language versions are authentic and you may use one or the other in court to find a meaning of the statutes and this has been done as recently as October 5 in the Supreme Court of Canada.

This would put the legal profession to the expense of acquiring two separate sets, one which they may never use, in order to have a complete set of the statutes. In lieu of doing that, of course, they only have an incomplete set of statutes in most offices. I can cite you three cases.

Senator Walker: You say you have one case where they compared the two of them—

Mr. Ryan: Just as recent as—

Senator Walker: Just a moment. Do you mind allowing me to make my point. Occasionally, the comparison of the two comes up. Now, in every library there is a French version and an English version and it takes only five minutes to send out the steward to get a copy. Now, we are talking about the 6,300 lawyers in Ontario and the 10,000 lawyers in Canada who do not have to compare the two, but who, if they want to, can go to a library and get what they want in five minutes. Do you follow me? Now, what is the reason for it?

The Chairman: I have suggested that we hear the Minister. Is that agreeable with the committee?

Senator Walker: Fine.

The Chairman: Then we can adjourn consideration, with the request that the Minister attend. This is no reflection on this witness.

Senator Walker: Not a bit.

The Chairman: I just feel that we have got into an area where this witness should not be asked to answer.

The Witness: May I add one thing for the clarification of the committee? This bill relates only to the annual statutes. The Statutory Provisions Act itself does not inhibit the commission. This only goes to the annual statutes.

Senator Fergusson: Then all the discussion about the six and 12 is not really applicable?

Mr. Ryan: It is anticipating what may be done.

The Chairman: We would be setting quite a precedent.

Senator Walker: My friend says that, but that is not what the Leader of the Government said. He spoke of the Revised Statutes of Canada. Will this require, then, a further revision to make the Revised Statutes of Canada, in French and English, one volume?

Mr. Ryan: I beg your pardon, senator?

Senator Walker: You say that this particular Act is applicable only to the annual statutes.

Mr. Ryan: That is correct.

Senator Walker: But is not applicable to the Revised Statutes of Canada.

Mr. Ryan: That is correct.

Senator Walker: Will you have to come up with another Act to amend that, or an amendment to this Act?

Mr. Ryan: No, sir. The commission has not gone to print yet. If there is a reason for them to reassess the Parliament's point of view, as derived through this bill, they will probably look at what they are at the moment proposing.

Senator Walker: You are not suggesting that they print the annual statutes, French on one part of the page and English on the other, and then print the Revised Statutes of Canada as they are?

The Chairman: No, he has not said that.

Senator Walker: As they are at the present time?

The Chairman: No, he has not said that. But in the priority of things, the item that

you are stopped at at the moment is the printing of the annual statutes. You know, and I have a strong feeling, too, that if you establish a precedent of the divided page in the annual statutes you are going to carry it through into the others.

Senator Walker: I have just one more question. Mr. Ryan, would you be good enough to tell us whether this policy has already been decided? You speak as if it has already been decided.

Mr. Ryan: The Statutory Revision Commission at the moment has indicated that they would put the revision out in the two

columns. This information, I believe, has been indicated to the Senate by Senator Connolly, if I am right.

Senator Walker: Yes, the leader. Yes, exactly. So that if we pass this bill it is a *fait accompli*, is it?

The Chairman: That is what you are going to get.

Senator Walker: Exactly.

The Chairman: Well, the committee adjourns to invite the Minister of Justice, Mr. Trudeau, to attend.

The committee adjourned.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 10

Second and Final Proceedings on Bill S-18,

intituled:

"An Act to amend the Publication of Statutes Act".

WEDNESDAY, NOVEMBER 22nd, 1967

WITNESS:

Department of Justice: The Honourable **P. E. Trudeau**, Minister.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47).

Ex officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 2nd, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Deschatelets, P.C., for second reading of the Bill S-18, intituled: "An Act to amend the Publication of Statutes Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 22nd, 1967.

(11)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9:30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Benidickson, Burchill, Croll, Everett, Gélinas, Gershaw, Gouin, Irvine, Isnor, Leonard, MacKenzie, Macnaughton, McCutcheon, McDonald, Molson, Pearson, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt and Walker. (23).

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel; R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

Bill S-18, "An Act to amend the Publication of Statutes Act", was further considered.

The following witness was heard:

Department of Justice: The Honourable P. E. Trudeau, Minister.

On Motion of the Honourable Senator Molson it was *Resolved* to report the said Bill without amendment.

At 10:10 a.m. the Committee proceeded to the next order of business.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 22nd, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-18, intituled: "An Act to amend the Publication of Statutes Act", has in obedience to the order of reference of November 2nd, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

(Recorded by Electronic Apparatus)

Ottawa, Wednesday, November 22, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-18, to amend the Publication of Statutes Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators, we have a number of bills before us this morning. We have set Bill S-18, which was heard in part a week ago, as the first on the list today, so that we might hear the Minister, the Honourable P. E. Trudeau. He is here now. I think you understand, Mr. Trudeau, the reason why we held this bill up for further consideration.

Honourable Pierre E. Trudeau, Minister of Justice: I do, Mr. Chairman.

The Chairman: Senator Walker, you raised the question on the last occasion we met. Is there anything you want to ask on that point?

Senator Walker: Yes, Mr. Chairman. Mr. Minister, first we want to welcome you as a distinguished French Canadian lawyer and to say that the Opposition members in the Senate have just unanimously chosen a French Canadian as our leader. Furthermore, our deputy leader is also a French Canadian, as is the deputy leader of the Government in the Senate.

Having said that, and with your knowing that you have our goodwill, would you be good enough to tell us the reason for this change that is being considered? I come from Ontario, where I have been a former President of the Law Society. There are 6,000 lawyers in Ontario and fewer than 100 are French Canadians. We wonder why it is that the statutes are going to be printed, a half-page in French and a half-page in English,

instead of being printed as in the past, when we were able to get a copy of the statutes either in French or in English as we wished. If at any time we were in doubt, we could go to the county library and look up the approximate section in French or in English. Do you follow me?

Hon. Mr. Trudeau: I do, senator.

Senator Walker: It has been raised with me by literally hundreds of people. Right across Canada, of course, the situation is even more extreme than it is in Ontario. I know that in Quebec and New Brunswick there are a great many French Canadians; but in British Columbia, Alberta, and Saskatchewan and Manitoba, yes, they have a few; Nova Scotia has a few; Prince Edward Island has none. Do you follow me?

Hon. Mr. Trudeau: I do.

Senator Walker: Of 20,000 lawyers, perhaps there are as many as 4,000 French Canadian lawyers. The question that I am asking is, much as we love the French Canadians, and much as we love the language, why must we now have to buy the Statutes of Canada, which are very voluminous, not just in English or in French but in one set including the two languages. Do you follow me?

Hon. Mr. Trudeau: Yes, senator. I suppose the short answer is that bilingualism costs a little bit, and that is the reason why we must pay for it. The more thorough answer would, I suppose, go into the constitutional and legal aspects of the problem and then perhaps into the political and symbolic.

I think it is quite clear that the bill we are adopting now gives the Governor in Council the authority whereby the statutes can be published in this way. The bill itself is no direction by Parliament to do this. But your

assumptions are quite fair and, if I have any say in it, the statutes will appear in the form that you say, senator.

When I talk of the constitutional and legal reasons, I suppose they go back to section 133 of the B.N.A. Act, that commands that the laws of Canada shall be in both languages. Because of the legal doctrine that arises out of that, both languages have equal force before the courts and in pleadings and in legal procedures. The consequences that arise out of that doctrine are to the effect that a lawyer in Vancouver or Halifax, or any place where the laws of Canada have force, is entitled to use that version of the law which is most compatible with his case—and indeed he is not only entitled but I would suggest that it is the duty of the lawyer to make sure that that version of the law prevails which is the one most compatible with justice as he sees it.

This, I suppose, in a sense is irrelevant to the fact that not every lawyer will be using the two languages, but, although the figures given by the senator are, I assume, approximately right, I have met many, many English lawyers, and other people indeed, who say that they do not speak French but that they can read it. I assume that many English-speaking lawyers, while they may not use the French language frequently, will be able to read it. They have told me so many times.

In a very real sense, lawyers have not got a complete set of the laws of Canada if they do not have the two versions in their library. I think the way we intend to proceed is in reality the most efficient and most economical way of making sure that every lawyer has the complete set of the laws of Canada and that every client consulting a lawyer and every judge before whom pleadings are made will have the complete set of the laws of Canada.

I do not have to remind you that this is not legal fiction; this is the judgment of the Supreme Court and indeed of other courts that have used one or the other language. Indeed, they have used it even in applying the B.N.A. Act itself to reach the proper interpretation of the word "works," in Section 92, paragraph 10. They have used both languages and quite rightly so, because we all know that it is very helpful sometimes in trying to interpret a legal text. In trying to find the exact meaning that the legislator must have intended, it is very helpful to

have comparing versions. I think this is an experience that every Quebec lawyer has had.

The Chairman: Many others as well.

Hon. Mr. Trudeau: And I suggest many others, too, in other parts of the country. I have heard about lawyers in Vancouver saying precisely what I was saying a moment ago, that sometimes it is useful to have the French text in order to make a point even more clear when arguing on some particular statute.

Those, then, are the broad constitutional and legal aspects of the matter. Now, there is obviously another aspect of it. I could qualify it as symbolic or political or politic, but it is the belief of the present Government that the recurrent waves of Quebec nationalism which have caused dissension in this country periodically, every generation or so, are largely caused because of the way the Government of Canada has been run for 100 years. The way of Canadian politics has largely resulted in the fact that French Canadians feel themselves at home essentially in Quebec, but that as soon as they leave that province they feel that they are indeed in their own country but not in a part of the country where they can fulfill themselves to the utmost of their possibilities because they are asked to operate and think and work in another language.

I do not think any realistic French Canadian believes that the remedy to that situation is to force everyone to speak both languages, which is indeed unthinkable and undesirable because, I suppose, impracticable. But in the symbols of government and indeed in the application of the law I think that this country would do well to take a page from the books of other countries where more than one language is official.

There is no danger, and I think we all realize that, of the French ever overrunning the North American continent or Canada, and I believe that it would be a little price to pay to "spoil," in a sense, the French-speaking part of this country, the French-speaking citizens of this country who are a rightful minority under our law and who have equal rights at least under Section 133 so far as concerns the laws of Canada and pleadings in the courts of Canada and the languages used in Parliament and its Acts. If this were attempted, and I suggest that it is the policy

of the present Government to try to make it a reality, if it were attempted to at least put the two languages on an equal footing in the law, in all important areas there would be equal rights of the two languages in a legal sense in these areas, and this is a very important aspect of our policies.

I want to make myself clear on this, Mr. Chairman. It is not an attempt to introduce sociological or economical equality between two language groups. I think anyone who is realistic will realize, as I said a moment ago, that French-speaking Canadians will never be as numerous as English-speaking Canadians or as the English-speaking peoples on this North American continent, and it would be futile to try to legislate that into reality. But that they should have equal rights in the law is something else, and something to which we are attending, and this is the most obvious way of doing it.

The Chairman: Mr. Minister, we already made a provision of this kind in 1965 in relation to the printing of the Revised Statutes, so that, if we do not make the printing of the Annual Statutes and the Revised Statutes conform, we are going to increase very substantially our printing costs.

Hon. Mr. Trudeau: This is right, Mr. Chairman. The Commission for the Revision of Statutes has authority to recommend the form of the statutes which it feels best, and we have reason to believe that it will recommend this double column form of statutes, and I have reason to believe that the present Government will accept that recommendation.

Senator Walker: May I ask this question: under Section 133, of which we are very proud and which gives equal rights to, among other things, the official languages, and puts the French language on an equal footing with the English, is there any discrimination against the French language by reason of the fact that the English text is printed in English and the French text is printed in French and in separate volumes? Having in mind that of the 20,000 lawyers in Canada probably 16,000 would have reference to the English text only, is there anything there that demonstrates an unequal footing?

Hon. Mr. Trudeau: I am tempted to answer that by referring to a situation which is not at all parallel but from which I suppose the same doctrines or the same legal phraseology can be used. I am thinking of the "separate

but equal" doctrine in the United States, and while it may be a faulty parallel in some senses, in others it is very real. Here I am referring of course to the interpretation of the equal rights for the Negro citizens of the United States which applied for nearly 100 years, until the decision of the Supreme Court in *Brown versus the Board of Education* in 1954, which I think was a turning point in the legal and political history of the United States, and constituted a turn from the separate but equal doctrine to the doctrine of complete integration. This meant that you were not giving equality to Negroes if you gave them separate schools; you were giving them equality if they were completely integrated into your system of education. I hate that comparison because of some of the implications involved but I am not sure that some of the thinking that underlies it should not enlighten us on the discontent which has troubled this country periodically and which is troubling it to a very serious extent now. If you take the position that both languages can be made equal by being made separate, and we are talking, of course, now in a very limited sense about the physical publication—but if you take this approach to the problems of this country, chances are you will indeed make the French and English separate and equal, but then that is what separatism means. "We will separate from the rest of Canada and we will be equal to the rest of Canada and we will have our laws in French and you can have your laws in English. This solution is the only one to the discontent that this country has known, because we have seen over 100 years of Confederation that we can never be completely integrated into Canada, that we can never really say that the Canadian Government is really our Government, the Government of both language groups. We can never say that the Canadian Government is anything else but the expression of the collective will of English-speaking Canadians."

Look at all the symbols attached to the central Government—you know the grievances and there is no point in my repeating them. But this, I suggest, is the ultimate consequence of the approach which Canada has used for 100 years in this very little matter of publication of statutes. This is a symbol of the politics of this country, and I think that any country should essentially be tested by the way its legal system meets the challenges of the times, and I think a great

nation is one which has a great legal doctrine, and in that sense of course our nation may not be great.

Senator Walker: We are, I hope, treating this as a legal problem and not as a political problem. Your suggestion is that by printing one page half in French and half in English you are helping to find a solution to a problem of unity rather than having the French is one volume and the English in another and so cutting down the volume and cost of printing to whoever is buying it by one-half.

Hon. Mr. Trudeau: I am not sure that the cutting of the price would amount to a reduction by one-half. I was given to understand that the increase in volume by using this bilingual version would be in the region of 25 per cent, and I understand that this is done by reducing the size of the printing. It is also apparent to me that if you have two volumes, or, indeed, facing pages, you have four margins instead of three...

Senator Walker: Whatever way you arrange it it is still twice as much.

Senator Benidickson: There is also the question of the size of the volume; it is doubled whether you have it in your library or whether you have to take it into court.

Senator Walker: I appreciate this fine point you are making and on the high level which most of us missed. I have been constantly at the Bar for 36 years and was Parliamentary Assistant to the Minister of Justice and I have been in the Supreme Court of Canada twelve times, and I have never in my life had occasion to look at the French language version of the statutes. I am not an international lawyer nor am I a constitutional lawyer, but I think I have been involved in practically every other kind of case.

Hon. Mr. Trudeau: Every statute can be argued from the text in both languages. That is the point I was making earlier, and I am sure that if you had had the French text in front of you in various cases it might have been a convenient way for you to make some additional points.

Senator Walker: Well, there was a French text there and of course there is one in every legal library and every county library across the country.

Hon. Mr. Trudeau: We know how that works out in fact. You may have a French version somewhere down in the courthouse library but you may not have it in your office and if you are working on a case and you have both versions in your office I think you will have an edge over your opponent.

I cannot, Mr. Chairman, contradict the honourable senator too much on the other point. It is obviously a little less convenient, perhaps considerably less convenient, for some people to have the two-text edition because of the heavier weight of the volume or the slightly increased space taken up by the volume, but I can only repeat what I said at the outset that bilingualism costs a little bit. It costs a little something to have simultaneous translation and it costs a little bit, indeed, to print the laws in both languages, and it will cost more and more, I guarantee you, as time goes on, because the B.N.A. Act says that both languages can be used in the courts of Canada. There are many examples of which you and I know where a French-speaking lawyer or litigant finds it very difficult to put his case forward in front of some of the judges of our federal courts. I think that judges themselves are aware of this, and I suppose we will have to find a remedy for it sooner or later, and that too will cost a little. It costs a little to have bilingualism on letterheads of the Government and on public buildings, and so on. But I suggest that this is one concrete way in which the citizens of Canada in the provinces which are farthest removed from Quebec will be made to realize that this is indeed a bilingual country, and they will be a little less shocked when French-speaking communities in that particular remote province ask that their linguistic rights be respected.

We heard a premier of one of the provinces not so long ago assure us that French would never be put on an equal footing in his particular province. But I suggest that he is mistaken from the word "go," because French is on an equal footing in his particular province—it is before the federal courts in that province, and it is in the two versions of the laws of the federal Government in that province—and if our policy is realized in the matter of publication of statutes he will have the French language on an equal basis with the English language in his particular province, and on the shelves of the lawyers of his particular province, and it might be a contribution to the education of some of these people.

Senator Walker: Mr. Minister, I would be the last person ever to do anything to make French anything but on an equal footing. My suggestion is that if it is the French text, then it is in one volume, and if the English text, then it is in another. That is the conclusion I have come to, and if I thought it derogated at all from the rights of French-Canadians I would be the first one to oppose it. Do you follow me?

Hon. Mr. Trudeau: I follow you, senator.

Senator Macnaughton: On the political basis, I agree entirely with the remarks as expressed by the minister this morning. On the practical basis, as a practising attorney in Montreal, it is almost mandatory to have your French version alongside your English version, and you can clutter up your whole desk with the English and French versions. It would be of practical use to us to have the two versions side by side.

The Chairman: In the same volume?

Senator Macnaughton: Yes, in the same volume. I happened, by coincidence, to have the tax convention supplement between Canada and the United States in front of me, and I would assume, inasmuch as this is side by side, that all treaties and, in fact, the announcements from External Affairs and other departments are side by side. So, on a practical basis it is a very useful measure.

The Chairman: Are there any other questions?

Senator Everett: Mr. Minister, in a conflict between the languages, could you tell me which is the dominant in interpretation, or is there a dominant language?

Hon. Mr. Trudeau: The courts have followed a rule which I can only paraphrase, that they will use whatever language appears to them to correspond best to the intention of Parliament; they will use sometimes the French, and sometimes the English; neither version has priority over the other. And the courts use one or the other in order to establish the closest approximation they can to what Parliament really intended. By looking at the two versions, as often happens, we understand well what one word means by seeing what it says in translation.

Senator Everett: So you would say then, Mr. Minister, that by printing the versions

side by side you improve the degree of interpretation that is available to the lawyers and to the courts?

Hon. Mr. Trudeau: That is exactly my point, Mr. Chairman.

The Chairman: You improve the expedition.

Senator MacKenzie: In international situations, like the United Nations, where two, three, four or more official languages are used, do you know what is done in such cases?

Hon. Mr. Trudeau: Yes, I think I can answer that, Mr. Chairman. In cases where you have more than two official languages, as is the case in the United Nations and as is the case in at least one country, Switzerland, where they have, as we all know, four official languages, three of them being working languages of the state, they do not attempt to have the three languages on the same document, which would make three or, in some cases, four or five parallel columns on the same page. They have "separate but equal" documents there, but it is clearly a matter of convenience because in other countries where they use two languages—and I think this point was made to you at your last committee meeting by Mr. Ryan of my department—countries like South Africa, Belgium, Ireland, they have both languages in the same volume, sometimes on facing pages, sometimes on parallel columns of the same page. So, in so far as we can be enlightened by the practice of other countries, I would say that Canada is not as progressive as all other bilingual countries.

Senator MacKenzie: On this point, it is conceivable in the world we live in that Chinese may become a relatively important language in British Columbia. I give that as an illustration of the situation in other provinces, but it is peculiar there because of the vast population of China across the Pacific, and it is conceivable that we might find ourselves in the kind of position the United Nations is in of what you might term a multiplicity of languages.

Hon. Mr. Trudeau: That is a perfectly valid point, Mr. Chairman, and I would not hesitate to suggest that if tomorrow or in 10 years' time or in "X" number of years there were 10 million Chinese Canadians, we would be pretty hard pressed not to make

Chinese one of our official languages. This can apply to Ukrainian or German or any other national language. When there is grouped within a state a very considerable, substantial minority which speaks its language and intends keeping on speaking it, I suggest that state has to reassess its position as to what languages will be official.

Senator MacKenzie: I agree completely.

Hon. Mr. Trudeau: But if and when we reach this stage, senator, I am quite sure that we will have to reassess the situation. And as we probably will not be able to print French, English, Chinese and Ukrainian on the same page, we will then get back to the separate but equal texts; but whether we have it within one state or by separating the country into three or four sovereign states is something upon which I cannot speculate.

Senator Leonard: Might I ask the minister and Senator Macnaughton, in view of the fact they are both members of the Bar of Quebec, whether or not the views they have expressed here as to the desirability of this form of publication for members of the Bar, particularly in Montreal, the City of Quebec and Quebec province generally, represent the views generally of the Bar of the City of Montreal, the Bar of the City of Quebec, or whether there may have been similar requests for this type of publication? Is that a fair question to ask, whether you do represent generally the views of the Bar?

Hon. Mr. Trudeau: I think Senator Macnaughton's point—and I agree with it 100 per cent—is that the laws of Quebec do appear in this form now, and it is obviously an expression of the desire of the legislators, the lawyers and the judges of that province.

Senator Leonard: It is a general feeling?

Hon. Mr. Trudeau: Well, I do not know. Senator Macnaughton has more experience with lawyers than I do, and with the courts, but I would presume from the fact this is the way the laws are printed in the Quebec statutes, that this would be the general feeling. However, I bow to the senator's greater acquaintance with the law.

Senator Macnaughton: I have not canvassed the Bar on that particular point, but I would be amazed if the opinions expressed by the two of us this morning were not acceptable to the Bar generally.

Senator Leonard: That is the point I would like to make.

Hon. Mr. Trudeau: There is a final point I would add which has not arisen out of any of the questions, but about which we might think. We are working more and more with the idea of the computerizing of the law, both the case law and the statute law, and in some circles in the United States they have made great progress with this.

In our department Mr. Ryan is looking at it with intent, and I must say I have been doing some reading on it too. We are entering into an age where computers will be not only useful but indispensable to the workings of the law. If we want to have a more efficient legal system, and if we want to make more efficient the work of the lawyers in the courts, we will more and more have to get our laws, and, I suppose, our judgments, on tapes in order that by feeding the information into a machine we will have, in a few seconds, the result of research which would take a lawyer or a judge many days to accomplish by going through the cases.

By having the laws on the same page in the same version the taping of them will be made much simpler, and we shall be able to do away with a great mass of cross references.

Senator Croll: Mr. Minister, do you think the extra money that will be spent on printing will be saved by the computers in doing away with judges and lawyers?

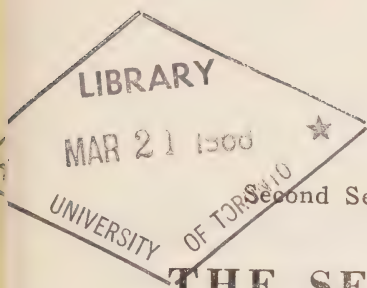
The Chairman: I was thinking it might do away with the Court of Appeal.

Hon. Mr. Trudeau: It might eventually do away with ministers of justice.

The Chairman: Are you ready for the question? Shall I report the bill without amendment?

Hon. Senators: Agreed.

Whereupon the committee concluded its consideration of the bill.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 11

Second Proceedings on Bill S-21,

intituled:

"An Act to amend the Food and Drugs Act".

WEDNESDAY, NOVEMBER 22nd, 1967

WITNESSES:

Department of National Health and Welfare: Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services; M. G. Allmark, Assistant Director General (Drugs), Food and Drug Directorate.

Others: Dr. Myron Arons, Chairman, Department of Psychology, Prince of Wales College, Charlottetown, P.E.I.; Dr. Stanley Krippner, Senior Research Associate, Department of Psychiatry, Maimonides Medical Centre, New York, N.Y.; Dr. John H. Perry-Hooker, Medfield State Hospital, Harding, Massachusetts; Mr. K. Izumi, architect, Regina, Saskatchewan.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>),
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47).

Ex officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 1st, 1967:

"Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill S-21, intituled: "An Act to amend the Food and Drugs Act", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Farris, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 22nd, 1967.

(12)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10:10 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Benidickson, Burchill, Croll, Everett, Gélinas, Gershaw, Gouin, Irvine, Isnor, Leonard, MacKenzie, Macnaughton, McCutcheon, McDonald, Molson, Pearson, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt and Walker—(23).

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel; R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

Bill S-21, "An Act to amend the Food and Drugs Act", was further considered.

The sub-committee, appointed to report on Senator Molson's amendment respecting the promotion of "LSD", distributed for the consideration of the committee a draft of a proposed new section 47, to be inserted on page 4 immediately after line 21. Text of the amendment can be found in the evidence following.

The following witnesses were heard:

Department of National Health and Welfare:

Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services.

M. G. Allmark, Assistant Director General (Drugs), Food and Drug Directorate.

Others:

Dr. Myron M. Arons, Chairman, Department of Psychology, Prince of Wales College, Charlottetown, P.E.I.

Dr. Stanley Krippner, Senior Research Associate, Department of Psychiatry, Maimonides Medical Centre, New York, N.Y.

Dr. John H. Perry-Hooker, Medfield State Hospital, Harding, Massachusetts.

Mr. K. Izumi, Architect, Regina, Saskatchewan.

Senator Thorvaldson suggested that Dr. Hoffer of Saskatchewan be invited to appear before the committee. The suggestion was taken under consideration.

Consideration of the said Bill was deferred to the next meeting of the Committee.

At 12:35 p.m. the committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 22, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-21, to amend the Food and Drugs Act, met this day at 10.10 a.m., to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, at the last sitting of the committee, it will be recalled, we considered various sections of this amending bill, and then a subcommittee was set up to consider appropriate language in which to phrase an amendment in line with the thinking of Senator Molson and others. Copies of this proposed amendment are being distributed now.

(*Text of draft amendment*)

"47. (1) No one shall teach or advocate by word or deed or any other means of publication or communication whatsoever the use of a restricted drug, whether by possession, possession for trafficking or trafficking, where such word, deed, publication, or communication is reasonably and ordinarily calculated or likely to lead, encourage or induce anyone so to use a restricted drug; but this prohibition shall not apply to the publication of a report or to fair comment on any such word, deed, publication, or communication.

(2) Every person who violates subsection (1) is guilty of an offense and is liable

(a) upon summary conviction for a first offense, to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment, and for a subsequent offense, to a fine of two thousand dollars or to imprisonment for one year or to both fine and imprisonment; or

(b) upon conviction on indictment, to a fine of five thousand dollars or to imprisonment for three years or to both fine and imprisonment."

I might tell you that while this is the result of the work of the subcommittee, it is not that of the whole subcommittee. I was able to consult Senator Walker and also Senator Molson. I was not able to consult Senator Thorvaldson. While I spoke to Senator Croll, I have not obtained any particular view from him up to this moment.

So, the subcommittee is putting before this committee a suggested amendment to deal with this question of those who may in some form advocate or encourage the possession for trafficking of the drug which is commonly described as LSD.

In the meantime we have received requests from a number of people who wish to be heard on the substantial question of the quality of the LSD—its goodness as opposed to its badness. We have present today four representatives who wish to present views, and file some material. The first on the list that I have is Dr. Myron M. Arons, chairman of the Department of Psychology, Prince of Wales College, Charlottetown, Prince Edward Island.

Our usual practice has been to hear persons who desire to make representations in connection with bills that are before us. Am I right in assuming that that is the view of the committee in relation to this bill?

Hon. Senators: Agreed.

The Chairman: I would think that whatever is said, and whatever representations are made, should fit into the context of the fact that this is Canadian legislation and is based on considerations and existing situations in Canada.

Dr. Arons, would you like to come forward? In the first instance, I take it, Dr. Arons, that you will make a presentation

within the limits and the subject matter of the bill, and then if the members of the committee have any questions you will deal with them. Will you please proceed?

Dr. Myron M. Arons, Chairman, Department of Psychology, Prince of Wales College, Charlottetown, Prince Edward Island: Thank you very much, sir. Before proceeding to give a summary of the brief which the members of the committee find before them, I should like to mention that I have come here to speak to this honourable committee because I feel there is a great urgency involved in almost all legislation at present dealing with LSD. Apparently this concern is shared by quite a number of people, and I have only recently learned that many of these persons, had they known that the bill was being put through in Canada, would have come here personally at their own expense.

Because of the same concerns, three very distinguished gentlemen volunteered to come here with me today to present testimony concerning this bill. After I have made my initial presentation I should like to introduce them to you, and also give you a list of others who have contacted me. I think you will agree that this list contains the names of some of the most distinguished and knowledgeable people in the field of psychedelic research in the United States, Canada and England. This list was obtained in great haste—actually ten days ago. On November 10 I sent out a questionnaire, and I received responses to it, and I hope to be able to put those responses in as testimony, if they will be accepted. Later I shall ask permission to do that.

Permit me first to begin by summarizing the brief which you have before you. This is a rather extensive brief and, therefore, I have also had printed a summary in English and in French, in the hope that that will be helpful to the French-speaking members of the committee.

Mr. Chairman and members of the committee, my name is Myron M. Arons, and I am presently chairman of the Department of Psychology at Prince of Wales College, Charlottetown, Prince Edward Island.

I appreciate this opportunity to appear before your committee to present this testimony relevant to Bill S-21. It is my hope that the evidence I am presenting will aid the committee and the Senate in the creation of a well conceived and realistic LSD bill. It is my belief that Bill S-21 is *not* satisfactory

legislation. Why? Because bills similar to S-21 have been passed in the United States recently. Often these bills have been passed by states during a period of hysteria. Legislatures have been pressured into them, and in many cases little or no relevant scientific or professional testimony was heard before passage.

Not only have these bills failed to diminish the distribution of LSD by unauthorized persons, such as students—high school and college students—but they have on the contrary had the effect of radically curtailing supplies to authorize persons, such as doctors and researchers. The fact is that since the enactment of legislation like Bill S-21, all indications are that the use of LSD among students has increased while the number of research projects on LSD has drastically declined.

I cite in my brief a survey which I took of my own freshman class at Brandeis University in Boston. This survey was taken six months after Massachusetts had passed its LSD legislation. It showed that a significantly larger percentage of students admitted taking LSD than had been the case in the freshman class prior to the passage of this legislation. This was last year, 1966.

The Chairman: This is not through yet, you know.

Dr. Arons: I was speaking of the analogous bill in Massachusetts. I am sorry I did not make that clear.

Senator Walker: You say here “since the enactment of legislation like Bill S-21.”

The Chairman: “Like,” yes.

Dr. Arons: Meanwhile, research has declined to the point where there are only 12 remaining authorized human LSD projects in the entire United States. What is more, LSD legislation in the United States has served as fertile ground for the growth of criminal weeds. It is my understanding that a new purple flat tablet nick-named “Mafia acid” has already appeared in New York City. Since I wrote this I find it has appeared in New Orleans, San Francisco, Chicago, Detroit and several other cities, and Dr. Kripper is here to tell us about some of the analyses of these tablets which have appeared.

Thus, not only has a criminal market already started to build up in the United States, but also the criminally produced drug can be extremely dangerous. What is more,

since LSD has been made illegal—and I am speaking here of the United States—persons who do take the drug illegally and who are adversely affected by it are now afraid to seek professional help. A person who may be adversely affected simply will not go to a doctor or go to seek the help of any professional person.

Senator Molson: Why not?

Dr. Arons: He is afraid of being arrested. He is afraid that if he goes to a doctor somebody will discover he has taken LSD.

The Chairman: Except, doctor this bill which we are considering does not make the use of LSD an offence, only possession and possession for trafficking.

Dr. Arons: Perhaps this specific point would not be valuable in terms of your particular legislation.

Senator Molson: That would be supposition on your part then?

Dr. Arons: About this?

Senator Molson: Yes.

Dr. Arons: I do not know whether Dr. Krippner has any evidence concerning this.

Dr. Stanley Krippner, Senior Research Associate, Department of Psychiatry, Maimonides Medical Centre, New York: In Massachusetts the law provides that any doctor who treats a patient for LSD disturbance has to report to the state health authorities within 72 hours the state and name of that patient.

Senator Molson: The same legislation applies in the case of venereal disease, does it not?

Dr. Arons: Yes it does. There is a sad irony connected with LSD legislation passed in the United States. The only thing which has prevented the criminal element from flooding the market with LSD is that a large quantity of this drug, in most cases of good quality, is being produced by students, usually chemistry students. These students, probably well meaning and zealous in their beliefs in the favourable effects of LSD, are now, along with those who distribute and others who use it, criminals according to the law.

These effects point out the gross inadequacy of present LSD legislation in the United States. The legislation was not realistic

because it was ill-conceived during periods of hysteria and was not based on the objective understanding of (1) the characteristics of the drug, (2) the effects on the user, (3) the type of person who uses the drug, (4) the realities involved with enforcement for the particular drug, and finally the indirect adverse effect legislation would have on research.

In my brief I have touched on each of these points. To recapitulate, LSD is only one of a large and rapidly expanding number of closely related psychedelics. In some ways it is less offensive than many of the others. For example, it does not cause nausea as some of the other psychedelics do, and for this reason has become popular. In fact, in some circles LSD is already considered *passé*.

I mention this to point out the great number of related psychedelics, almost an infinite variety, that are on the market, so the legislation for, particularly, LSD is futile in a sense. All these drugs have relatively similar effects.

The Chairman: It is a method elimination, if you decide it should be eliminated, although your eliminator may not work collectively as rapidly as you would wish if you wanted to clean out all the types of psychedelic drug on the market.

Dr. Arons: Actually it is not really the psychedelics right now. Before there's some of us had not even realized the potential of morning glory seeds, and it turns out that morning glory seeds and banana peel have been turned into giving a psychedelic reaction, and it must be pretty hard to ban morning glory seeds or banana peel.

The Chairman: I was not suggesting it in that fashion. I was suggesting that if you create certain offences in connection with possession and trafficking you may not move quickly enough to bypass the number of them that come along, but you may keep pace.

Dr. Arons: Perhaps I might continue, because I believe I shall be touching on that point as I go along.

Despite great newspaper publicity to the contrary—and I think this is very important, because I am discussing now the effects of the drugs, and this is one of the things that has been very much played up in the newspapers, and in common parlance is what we have been talking about. There have been

discussions and these are the feelings and ideas of people at the universities. I am speaking scientifically now; I am speaking to you as a scientist, as a man who has done research in this area and gone to the material and the studies that have been made.

Senator Walker: Just on that point, your qualifications. Are you a doctor of medicine?

Dr. Arons: No, a doctor of psychology.

Senator Walker: Exactly, so you do not profess to know anything about medicine?

Dr. Arons: No. I am talking about research in terms of scientific psychological studies that have been done on LSD by other scientists.

Senator MacKenzie: These are medical researchers?

Dr. Arons: Many of them. Many are psychologists, psychiatrists, research workers, many people in many different areas.

Senator MacKenzie: This is evidence provided by the medical profession?

Dr. Arons: Yes, sir. I will purposely avoid giving any medical testimony. We have Dr. Perry-Hooker here who will speak for the medical profession. Let me just speak as a man who has looked through all this material now and done research and scientific studies.

The Chairman: With a background of professional training in this field?

Dr. Arons: Yes, at university, research centres, and so on.

Despite great newspaper publicity to the contrary, there are as yet no known irreversible psychological or physiological effects from the use of the drug. Some studies have suggested the possibility of chromosome damage under certain conditions. There are exactly three studies in fact. I do not at all want to minimize the importance of these or laud LSD. However, more recent studies—and you will find one of these recent studies in the appendix of the brief—have found no such damage. From the point of view of criminal and anti-social behaviour related to drug effects, at the minimum, alcohol is a far greater menace in this respect.

Senator Everett: What do you mean by the term "at the minimum"?

Dr. Arons: I mean that if I wanted to be very hard about it, I would say that alcohol was an infinitely greater danger in this respect in terms of criminal activity and in terms of anti-social behaviour than LSD, both relatively and in numerical terms.

In fact, a much more characteristic effect of the drug is to lead the subject to a strong belief in peace, love and religion.

Senator Croll: Is that bad, doctor?

Dr. Arons: I would ask you that, sir?

Senator Croll: I am asking the question.

Dr. Arons: I just mentioned here—and then I cut it off—and it may be I should repeat it. I have very strong feelings in this particular area and I think I should not let my own subjective feelings enter into it as a scientist. But let me repeat it, because I have a strong feeling about it.

Of course, during the current United States conflict in Viet Nam these values can be viewed by some as anti-social. The values I am talking about are, of course, those of a belief in peace, love and religion. In our present state of conflict I am afraid they are being viewed as anti-social, because they do not go along with particular views in the United States.

There are many acknowledged favourable effects of the drug. It is for this reason that suppression becomes so very difficult. And for this same reason, the drug is of great interest to researchers in many fields. And, to repeat, under supervised conditions the drug is relatively harmless.

You will find in my brief testimony to that effect.

The Chairman: If you stop there for a moment—there is nothing in this legislation that we are considering that would prevent research and study on what the applications and the beneficial effects might be, or the deleterious effects. Research is not being interfered with at all by this legislation.

Dr. Arons: Yes, sir, I am quite aware that ostensibly research is not being tampered with; but that in fact almost all senators want to encourage research.

Senator Everett: The first sentence on page 3 states "and there are as yet no known irreversible psychological or physiological effects from use of the drug."

Dr. Arons: That is right.

Senator Everett: The last sentence of the same paragraph says: "And, to repeat, under supervised conditions the drug is relatively harmless". Is the last sentence a contradiction of this?

Dr. Arons: Unfortunately, in my brief, in a summary, I have not been able to . . .

Senator Everett: I appreciate that.

Dr. Arons: I have mentioned in the brief that there are dangers to the drug, but what I want to show is that these dangers are not irreversible, that is to say, there are dangers in the sense that, under certain circumstances, and it is relatively rare, but nonetheless a person can get what we might call a feeling of bad judgment. He feels that he is as light as an angel and won't ever hurt himself if he falls. If he really takes himself seriously on that point, he is liable to fly out of the window.

An hon. Senator: It is irreversible then, is it not?

Dr. Arons: I suppose it is something the same as asking me if I wanted to fly while drinking alcohol and I killed myself. That would be irreversible, too.

But I mention "irreversible" in the usual sense of this word, that for example we know that methedrine—we are given to understand, at least, that with methedrine a certain damage is done. This is what I meant, and I am afraid that when you asked me then whether there is any danger or, for example, whether we get some rather bizarre reactions, I must say it takes normally two days, in some unusual cases as much as a couple of months, for those effects to be dispersed, but they do not return, as far as we know. I am simply stating our knowledge as it is at the present time. It may turn out that, five years from now, something may be discovered.

Senator Everett: May I ask a supplementary question? In reversing the effects, is it required in certain of these cases that the patient receive medical attention, or will the effects reverse themselves in some fraction of time?

Dr. Arons: I think that depends. I think that in certain instances medical care can actually maintain the effect. For example, in the paper that I have written I cite an exam-

ple where, if the doctor has a panic attitude and comes to the patient as if he were a psychotic, this could actually perpetuate these effects and does perpetuate them. If so it is very important that the medical profession be very much enlightened about LSD. The point is that all doctors do not really know that much about LSD. So if you go to the right doctor you probably would be able to have these effects dispersed immediately.

The Chairman: All that you are saying now would appear to be just that we are dealing with a potentially dangerous drug.

Dr. Arons: The point I am really trying to make is that we have gone over the literature on this matter. I must admit that I myself have been pulled into all of this and without going through the scientific studies, reviews, newspaper articles and so forth, I became panicky about this drug potential and I did talk to my students about not taking LSD, and so one, and so forth. But when I sat down and started doing some objective analysis, asking how many studies actually showed that there has been an adverse effect, how many people, for example, actually committed suicide, I found, that despite all the publicity—this may be very surprising to you but there is evidence to support this—that this does not turn out to be a dangerous drug from our present point of knowledge.

Senator Burchill: What I want to ask about is the statement here that there are many acknowledged favourable effects of this drug. I want to know what the favourable effects are.

Dr. Arons: I am coming to that, sir. I will come to these favourable effects and I have written them up in detail in the brief. Let me state what some of the unfavourable effects are. Some of the effects that I say are quite often found. If I may use the language and the jargon of the people who take the drug, these are in terms of what is usually called "a bad trip". You probably have heard of this "bad trip". It means that the person under certain circumstances starts to see or recognize something about himself. There is a kind of a self-deception which he has discovered, which can be very upsetting. It is more the sort of thing that we perhaps find in psycho-analysis. Persons who come to psycho-analysis often come to the point where they learn things about themselves which upset them. This can be dangerous, quite

obviously, but when it occurs in psycho-analysis it is in the presence of a medical man. If this reaction should take place in somebody's house or somebody's basement or in a school classroom, this obviously could be extremely dangerous from the point of view of the person. He is not likely to die from it. Nobody has ever died from it, as far as we know. There have been no deformed children, out of the hundreds of thousands of people who have taken LSD, not one case that has been shown of permanent irreversible effect.

I realize that I am saying something here that seems rather shocking, but it requires sometimes going right to the source and finding out whether we have not been hearing a great number of distortions about this. I tried to do this, and I would be very happy if somebody would present me with definite data showing me that these effects have incurred in any greater number than would have occurred, for example, with alcohol.

Senator Walker: May I do that, very briefly?

Senator Thorvaldson: I would suggest that the witness be allowed to read this brief, because I think it could be more intelligent if we heard the stories in it and then we can proceed.

Dr. Arons: In general the drug is taken not by criminal elements but usually by students, intellectuals and persons seeking creative and religious experience. The effects depend very much on the personality of the taker and on the environment. Thus, some persons may benefit greatly from the drug use while others may be relatively unaffected, and still others may be adversely affected. This is no more surprising than if we go to a house party and we all take the same amount of alcohol. We are going to see some persons react one way and others reacting another way. We have seen this with others drugs. It happens with LSD.

There is much evidence now to indicate that LSD can have very beneficial effects on certain types of people, to take but three examples: schizophrenic children, alcoholics, and potentially creative persons—there is a much longer list in my brief—and sound legislation must take these beneficial effects for certain persons into account as well as the adverse effects the drug may have on other persons.

On page 28 of my brief I list some of the really serious difficulties involved in trying to enforce LSD legislation. I shall not repeat these in full but only mention three of them. The first is the great ease with which it can be produced. As I said, I just read the other day where an eight-year old, using one of those chemistry sets that you buy for Christmas, produced LSD. I suppose the kid was pretty bright, but nonetheless that indicates just how easily LSD is produced. The second is that the drug is colourless, odourless and tasteless, and the third is that enough LSD can be soaked in a sheet of writing paper to supply a user for a month. Legislation which does not take these difficulties into account is simply not realistic and can lead to the serious consequences I mention above.

Finally, though no legislator intentionally sets out to discourage research the fact that the legal supply of LSD in the United States was withdrawn from the market, and given over to one government agency, the National Institute of Mental Health, has led to the following practical consequences: First, only the most conservative and thus often the least useful of studies are authorized by this agency. I have so much support from this from all the men in the field that I think you will find this irrefutable. Second, authorization for research and medical use is given to a very few applicants and only after long periods of processing and the filling out of impossible questionnaires—and I mean impossible questionnaires. Third, grants are almost unattainable. Four, the stigma attached to working with an illegal drug places the reputation of a researcher in serious jeopardy.

Professor Abraham H. Maslow, now President elect of the American Psychological Association, totally abandoned all of his research, all of his potential research in LSD which had to do with his peak experience in self actualization. Many of you are probably very familiar with Dr. Maslow. He simply could not risk having his work and reputation put into jeopardy.

Mainly for these reasons, research on LSD which nearly everybody agrees is necessary, and which represents one of the most promising areas of study in science today—and this may be really one of the biggest breakthroughs in science in the twentieth century—has practically come to a dead standstill in the United States.

In my brief I mention that there are only 12 remaining studies. As it turns out now, since I started to write this down, that number has been reduced to eight. Furthermore, many doctors cannot prescribe the drug for those persons whom they believe would greatly benefit from it.

I conclude my brief by offering positive recommendations for legislation in this area. Taking all of the problems which I have stated into account, I suggest, and many of my colleagues are of a similar opinion, that designated supervised regional LSD centres be established throughout Canada. These could be at universities and/or in hospital clinics. This would permit a safe outlet for those who want to use the drug and who would benefit the most from it. At the same time these would serve as research centres. Centres similar to this have been set up in Scandinavia and in England for other purposes. These centres and the supply of the drug should be under the control of the competent staffs, doctors and psychologists and researchers. In the meantime, doctors should be permitted to prescribe the drug, with no duress, to patients whom they believe will benefit from its use. It turns out that this has not been the case in the United States, even though there was no attempt at all to discourage research in the same way as you are making no such attempt, nevertheless these are all the side effects.

At the very minimum I recommend that the legislators seek as much objective testimony as possible before enacting any legislation. An international conference on LSD is to be held in Chicago the beginning of 1968. Would it not be a shame if Canada's representatives arrive at a conference to explore the best ways of legislating for LSD when just a few months before an inadequate and even dangerous LSD law had been put on its statute books? Would it not be so much wiser to await the conclusions of such a conference and profit from such international testimony?

Thank you for permitting me to speak before this honourable body.

Senator Croll: Mr. Chairman, may I ask one question? Doctor, please tell us something about yourself, your background, education, your expertise; in other words, what qualifies you to come here?

Dr. Arons: Yes, sir. First let me say in all humility that I am not the best person to be

here. I tried to state that in my brief. I came here because of personal interest, in the sense that research, my own research in the United States at a university was again discouraged. I was unable to receive material to do this research. I came to Canada because I had the feeling or the belief that in Canada this sort of research would be permitted.

As to my background, I am an American citizen. I was born in Detroit. I received a bachelor of arts degree at Wayne State University in Detroit. I was a member of the Psi-chi honour society. I went on to the University of Paris where I did my studies in philosophical psychology there. My studies were done on the subject of creativity. My thesis was written on that subject, and during my research at that time, although it had nothing to do with LSD since I did not know of its existence, I became very fascinated with certain accounts of very highly creative persons who were talking about experiences very similar to experiences reported concerning persons taking LSD. It did not click, if you will, until a little bit later when I began to speak to some of these creative persons—persons accepted as creative by virtue of being poets, writers, artists and so on—and then also speaking to some of these people who were taking the drug. I then began to realize that there was some great potential in terms of creativity involved in this drug. It was at that point that I became extremely interested, but I still was not involved in research in any way; I was just simply curious. I read a lot on it in order to do this kind of research. I returned then to Brandeis University where I became very, very interested in the problems.

I began to talk to some of my students and also to some of the professors over there, many of whom, such as Dr. Maslow, had been doing research but had cut it off, so I decided at one time to start a project myself. First of all, I used myself as a subject, and this was before the use of LSD was illegal in Massachusetts, before they had passed their laws, and I took 300 micrograms of LSD under certain conditions, and I kept very careful notes and observations of this. Then, over a period of a year and a half, on two different occasions, I took another 300 micrograms, which is the average amount that one takes.

I become highly convinced that research in this area was extremely fruitful. However, by the time that I got round to starting the

actual research project, the supply had been withdrawn. Some of my colleagues had attempted to apply to the National Institute of Mental Health for LSD, but they were not able to receive it and so I simply, along with everybody else, abandoned the study.

I then talked to a gentleman at Prince of Wales College, Professor Robert Carter, who is the head of the humanities there. He mentioned his own particular interest in the philosophical insights that were being reported in LSD experience and what potential there would be in studies in this area. He interested me very much and suggested we could do combined research on this project. Based to a large extent on this project, I decided to accept the position at Prince of Wales College. Actually it was last January that I assumed the position and started my work this semester.

Senator Isnor: This was your entry to Canada in 1967?

Dr. Arons: Yes.

Senator Isnor: And you were at Wayne State University?

Dr. Arons: I went to Wayne State University. I started in 1949, but I was out for some time in business and in other places. I returned in 1957 and finished with a Bachelor of Arts degree in 1961. I finished that and had gone to France by 1962. I returned from France with a doctor's degree in 1964.

Senator Walker: You asked for some up-to-date results to disprove what you said. At page 337 of Senate *Hansard*, our most distinguished medical senator, Dr. J. A. Sullivan, read into the record this result published in May of this year by Dr. Donald B. Lauria, Associate Professor of Medicine at Cornell University Medical College. That is a well known university with a good medical college, is it not?

Dr. Arons: Yes.

Senator Walker: And this is part of what he said:

Used promiscuously under uncontrolled circumstances, LSD is extremely dangerous. It is absolutely unpredictable. Of the 114 cases hospitalized...

We are now getting down to specific cases...

...at Bellevue during a recent 18-month period, 13 per cent entered the hospital

with overwhelming panic. There was uncontrolled violence in 12 per cent. Nearly 9 per cent had attempted either homicide or suicide. Of the 114, almost 14 per cent had to be sent on to long-term mental hospitalization, and half of those had no previous history of underlying psychiatric disorder.

Now, you wouldn't dispute that, would you, doctor?

Dr. Arons: I would not dispute it. But I would say there are many ways of interpreting these things. Let me put it to you this way. Just before I came here, two days ago, a lady came into my office and told me that her husband, a student of mine, was in Riverview Hospital in Charlottetown, Prince Edward Island. He had been arrested and taken there for the attempted murder of two girls on the street. He was wild and resisted arrest. Now, I had known this student at the academic level but not at the psychological level, and he had seemed to me to be a very fine student. I went over to the hospital and there discovered through being told by the psychiatrist that he had been under the influence of alcohol, that he had resisted arrest and that complaints had been made that he had tried to take two girls off the street and kill them. Now this happened under alcohol. I am sure we are all familiar, or we should be if we read the newspapers today, of the effects when people get in a panic and have reactions from alcohol.

Senator MacKenzie: Mr. Chairman, we are not at the moment considering the evil effects of alcohol and I believe many of us may have our own opinions on this matter.

The Chairman: I said to the witness earlier that the scope of our consideration is the bill as it stands and what it contains. I think it was agreed that it does not interfere or inhibit research and controlled experiment. The bill deals with extending the coverage of this restricted drug and to create certain offences of possession and possession for trafficking. The question that we have to decide is this: Is it a potentially dangerous product to be permitted to be dealt in freely and not to be under control?

Dr. Arons: My own observation here, and I have the backing of a number of people because I did not want to give my own background exclusively on this matter—some of them are among the most recognized

authorities in the field of LSD research in the United States, Canada and the United Kingdom—

Senator Molson: Have you read this book that Dr. Sullivan referred to the other day? It is entitled, *Lysergic Acid Diethylamide (LSD) in the Treatment of Alcoholism*. It is by Reginald G. Smart, Thomas Storm, Earle F. W. Baker, and Lionel Solursh. Have you read it?

Dr. Arons: No.

The Chairman: All I am trying to do as chairman is to keep the discussion within the relevant limits. The purpose of this bill is to provide that LSD shall be a restricted drug, and to create certain offences in relation to possession and possession for trafficking. It does not interfere in any way with research. Therefore it seems to me that evidence adduced here should be addressed to the question whether or not this is a potentially dangerous product to be permitted to be used indiscriminately by people or whether there should be some control in its use.

Senator McDonald: Could I ask the witness one question? I understand you said to the committee that one of the reasons you came to Canada, to Prince of Wales College in Prince Edward Island, was that some of the experiments you had been doing in the United States were no longer possible and you thought that in coming to Canada you could carry on some of that work? Are you conducting experiments and doing research into LSD at Prince of Wales College now?

Dr. Arons: No. I have waited to find out what the situation would be concerning this. Many of my colleagues in Canada have written and volunteered the information that what they had been doing has been aborted and for that reason I have held up my own studies.

The Chairman: You want to see a change in this legislation?

Dr. Arons: Yes. I am sure nobody wishes to prevent or inhibit research, but I am speaking from experience of the effect that similar legislation has had in the United States. All I am saying now is that some sort of guarantee for research should be put in.

The Chairman: But surely that would apply only if research should be endangered, and that brings us to the question of the administration of the law and surely we

don't get into that until after the law is enacted.

Dr. Arons: I was hoping we might learn from some of the experiences of our neighbours to the south.

Senator Gershaw: Mr. Chairman, if you turn to page 7 in this brief you will see where Dr. Smith has come to certain conclusions. He said that under properly supervised circumstances the drug is relatively safe. However, if any drug of unknown purity and unknown quality is taken in unsupervised circumstances it can be extremely dangerous. No one can tell what the results will be. The effects may last for a day and they may last for the rest of a lifetime. Unfortunately in the United States the circumstances predominating were largely responsible for the adverse reactions of LSD. I would like to ask the witness if he doesn't agree that the same thing applies in Canada, that these unknown results from the use of an extremely dangerous drug, an impure drug, if taken by certain people without supervision can be extremely dangerous.

Dr. Arons: Yes, sir. I totally agree that this is the real problem. Most of the adverse effects come, it appears, either from impurities, if a drug is not pure, or if it is taken in excess dosage or in circumstances where the person could have an adverse psychological effect when there is no guide. The point I was trying to make here was that ironically it seems to have turned out just the opposite. The "Mafia acid" LSD tablet, which I understand has been analyzed and found to have strychnine in it and no LSD at all, is all over the United States, because a legal and pure supply is not available. I am very upset by this and this is why I am prompted to come here, because what is happening in the United States is very dangerous.

Senator Gershaw: That is about all the bill proposes to prevent.

The Chairman: There is a danger in getting on a parallel line, and the two lines will never meet, in following this argument of Dr. Arons where we seem to be in agreement with the fact that under unsupervised circumstances the use of this product would be extremely dangerous. When you are dealing with this sort of thing and you provide certain prohibitions in legislation and you do not interfere in any way with the research

element, you are permitting an area for research under supervision.

Senator Walker: Is not that the bill at the present time?

The Chairman: Yes.

Dr. Arons: I think it boils down to this particular question: Would the bill in any way, directly or indirectly, inadvertently create a situation such as we are trying to describe here as existing in the United States, where research has been stopped virtually and where the ability to obtain an impure drug has increased tremendously, and where the children are using the drug under unguided and unsupervised circumstances? Ostensibly, there was no bill in the United States which prohibited research. In fact, everybody was in agreement that research should go on and that these things should be taken in supervised conditions, but what I am really concerned with is what has been the effect of this legislation. In the United States it has been placed, in the national legislation, under the Institute of Medical Health, and it has become impossible for researchers to get the drug. Because of the panic that took place professors did not want to risk their reputations, and there were other things. Would the bill you are presenting here have a similar effect, or can some guarantee be put into the bill which would prevent this?

The Chairman: The only guarantee is that the bill does not legislate against research; it does not legislate against the use of the drug, other than in the areas where offences are created—that is, possession, possession for trafficking.

Dr. Arons: There are two well-known researchers—Dr. Hoffer has been doing research with alcoholics in Canada, and Dr. Jensen—who have written to me, and I want to present this testimony, that just in the last year the drug in Canada has become impossible to get. I do not know what your previous status was on this drug. Was it a controlled drug before?

The Chairman: It was a drug, and the only prohibition was the sale.

Dr. Arons: And even since this the Canadian representatives who sent back the questionnaire told me their own research has been hindered. They are long letters, and I

do not intend to read them, but I would be glad to present them to the committee.

The Chairman: I appreciate everything you are saying, and I know the committee does, but we have a bill before us that deals with certain aspects, and there is nothing in the bill which would limit in any way supervised research. Therefore, we must assume there will be an intelligent administration under the Food and Drug authorities, and proper research will not be interfered with, until it is demonstrated otherwise. I do not know why they have had these difficulties in the United States. It may well be their administration is not geared to the problem, or they are trying to shut off things too fast and a lot of people get frightened. It is a fact that the pendulum in the United States will swing higher and lower faster than it will in Canada. In Canada there is an area in between; we never get as high on the high side or as low on the low side. This is the way you have to look at it, through our glasses.

Senator Everett: In appearing before this committee is not the doctor changing the emphasis that he put on the proposed legislation in his brief? Now he seems to talk about the problems that this proposed legislation will place on valid research.

I would like to refer him to page 28 of his brief, recommendation No. 2, where he states:

... no penalties should be imposed for simple personal possession and use. Legislation should be primarily aimed at anti-social behaviour, as is presently the case with alcohol.

If I read that recommendation correctly, doctor, it would appear to me that you are suggesting that there be no legislation at all in the reference to LSD because that is legislation that might refer to the purity of the drug and its over-use, as in the case of alcohol. Is that correct?

Dr. Arons: Yes, the fact is, and I have to state this as frankly as possible, that no legislation will be able to be enforced with regard to LSD, as far as the use of the drug is concerned. So, given this fact, what do you do? It seems to me that if you pretend to try to enforce it, all you do is to sort of make a fool out of the law. This is what is happening in the United States, and I mentioned this because it is unrealistic. You cannot stop it.

It is like turning on a salt machine in the ocean.

Senator Everett: Is not what you are saying that the only legislation the Government could possibly pass that would be realistic would be in relation to the Food and Drugs Act, as to the purity of the drug itself, and there is no other legislation that could reasonably or effectively be passed by a government?

Dr. Arons: I was suggesting indirectly that if we set up open channels for the use of the drug, that would guarantee the purity of the drug, so that the people who obtain these will find them pure, and you will also guarantee research at the same time and there will be no criminal outlet being created.

Senator Everett: And you would also guarantee unrestricted use?

Dr. Arons: I would not want to guarantee unrestricted use. In fact, the American federal legislation has no penalty for personal use as far as I know. I think there are many states in the United States that have placed a penalty on personal use, and these have been total failures. The American federal legislation has been much more reasonable.

The Chairman: It seems to me we are starting to go round in a circle with the doctor, and we are coming back to the same point quite a number of times. We have more witnesses and possibly we should move along.

Senator Molson: I want to ask a question or so, because in his evidence Dr. Arons made some categorical statements. He said there had been no irreversible effects shown yet, and he said the statement that chromosomes were damaged had been proven to be wrong by a later study which he has as an appendix marked 1-B.

Dr. Arons: May I correct that? In essence we do not say it has been proven to be shown wrong. We say that one study has been presented, and then another study has been presented which disputes the first study.

Senator Molson: Perhaps I used the wrong word, but the inference there—I have not had time to read all of this appendix in detail, but in glancing at it I see that at the bottom there are the names of those presenting the paper, namely, William D. Loughman, Thornton W. Sargent and David M. Israel-

stam, and just above those names is this paragraph:

Note added in proof: Since submission of this paper a comparable study supporting conclusions opposite to our own has been reported.

Dr. Arons: Where are you, sir?

Senator Molson: This is at the bottom of Appendix 1-B.

Senator Burchill: Is it on the first page?

Senator Molson: No, it is on the last page, just above the signatures of the three gentlemen from the Donner Laboratory. The paragraph continues:

Also, a paper has been called to our attention reporting a half time of LSD *in vivo* in human plasma essentially identical to that which we calculated from the mouse data.

So when you state categorically there has been no proof that chromosomes have been damaged, I would point out that there seems to be some doubt in the minds of the gentlemen who wrote this paper.

Dr. Arons: This is generally the way a paper is finished. This whole area of chromosomes is left in the air. I did not mean to tell you that this was a definitive study. What I meant to say was that all publicity had been given to the fact that there had been great damage, and this study was set up to try to verify that—to try to find out if, in fact, there was such damage.

Senator Molson: They do not find such damage, and then they find that a further study suggests there is damage. So, we are right back where we started. There are various studies proving various things.

The Chairman: I would point out that there are other witnesses present this morning. I understand that Dr. Krippner has something to say for our consideration, within the guidelines I have laid down. Would you like to come up here, Dr. Krippner, and give your qualifications?

Dr. Stanley Krippner, Senior Research Associate, Department of Psychiatry, Maimonides Medical Centre, New York: Yes. Dr. Arons has a full list of my qualifications, and I should like to say that if the snow abates I have a plane to catch a little later this morning.

I am Senior Research Associate in the Department of Psychiatry at the Maimonides Medical Centre in Brooklyn. This is my tenth trip to Canada. I come up frequently to do workshops for teachers in Montreal, Toronto, Port Arthur, Fort William, Hamilton and Guelph. My educational background is in psychology, and I am working in a psychiatric unit at a hospital.

My own area of competence in the LSD field is a number of surveys I have made on the illicit usage among teenagers, college students and artists, of LSD and associated compounds. My first paper on LSD was printed in 1962. I presented a paper to the American Psychological Association on LSD in 1967, and in 1968 four additional papers of mine will be published in four separate books, coming out in the United States. I think that that is sufficient for the time being.

The Chairman: Now, on the point with which we are concerned in respect of this bill have you any presentation you would like to make?

Dr. Krippner: Yes. I think we should stick very closely to the point here, because I certainly share the concern of the senators in respect of restricting the use of LSD. Of course, in my opinion, there is no doubt about it. LSD is a potentially very dangerous drug, and legislation is certainly needed. The question, therefore, comes down to: what type of legislation should there be?

One of my medical colleagues, Dr. Walter C. Alvarez, one of the most distinguished medical men in the United States, and Emeritus Professor of Medicine at the University of Minnesota, has given me a letter which he has allowed me to present to the committee. I am in total agreement with the contents of this letter and I should like to read it to you:

"I am much opposed to the passage of any laws to make illegal the sale or use or possession of LSD for several reasons.

First, as we all know, the law to prohibit the sale and use of alcohol was a terrible failure, which made matters only worse.

Second, the law to prohibit the sale and possession and use of heroin has been a pathetic failure.

Third, any effort to stop the sale and possession and use of LSD is almost certainly doomed to failure because LSD

can so easily be made; because without color or smell or taste it is extremely difficult to recognize; and because the dose is so extremely small that a man could bring into our country thousands of doses in a fountain pen.

Finally, the passing of a law against LSD will serve only one purpose and that will be to interest mildly psychotic boys and girls to get some of the drug, and to try it on themselves. Only if LSD is ignored can we hope that the present-day fad of using it will pass. Let us remember that LSD is not an addictive drug like heroin.

Also, any prohibitive law would be unfortunate in that it would almost put an end to research with the drug carried out properly in scientific laboratories.

Sincerely,

Walter C. Alvarez, M.D., Emeritus Professor of Medicine, University of Minnesota, Professorial Lecturer, University of Illinois."

Senator Isnor: He is speaking of American laws?

Dr. Krippner: Yes, he is speaking of American law, but he said I could use this, and present it to this committee for whatever benefit it may have.

I have one question I should like to ask the senators in respect to the putting of LSD on the list of restricted drugs. I should like to know which other drugs are on the list and which are currently being used in medical research.

The Chairman: Dr. Hardman, can you give us that information?

Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services: Under the proposed legislation the only one mentioned in the schedules is LSD. There are no other hallucinogenic substances.

The Chairman: Schedule J, which is set up by this bill, has only the one item in it at the present time, but I gather the witness's question was in respect to what controlled drugs—this is in respect of a restricted drug, and his question was directed to the area of controlled drugs. I think his question was that general.

Dr. Hardman: The only other drugs are those in the barbiturate and the amphetamine groups.

The Chairman: What about research in connection with them?

Dr. Hardman: These are legally available to any physician in Canada who can prescribe them. The regulations under the controlled drugs legislation, or part of the Food and Drugs Act, provide for the prescribing of those drugs by a physician. That is under the controlled drugs legislation. The position with respect to LSD is that there has not been a demonstrated medical use for it at the present time, and consequently it is not generally available to the medical profession to prescribe. The regulations which provide for its disposition to various research workers are contained in Division 7 of the Blue Book, and these enable the minister to authorize the sale to a recognized institution for laboratory research or for clinical research.

Dr. Krippner: Therefore, am I right in understanding that LSD will be the only drug that bears the title "Restricted Drug"?

Dr. Hardman: That is in the bill that is before the Senate at the present time. I cannot say what other drug will be placed on the restricted drug schedule. This will be related to the demonstrated abuse of other drugs in Canada. If there is a demonstrated abuse then there will be a recommendation to the Governor in Council to place other drugs in the schedule.

Dr. Krippner: That is fine. That is very helpful.

Dr. Hardman: This is legislation which will enable the Governor in Council to take action in respect of placing drugs on a restricted schedule.

The Chairman: Just on that point I should like to say that there is authority in the Food and Drugs Act for the Governor in Council to make regulations providing for exemptions from the generality of the prohibitions that you have in the statute, and particularly in subparagraph (j) of subsection (1) of section 24 the authority is that the Governor in Council may provide by regulation for exemption of any food or drug from all or any of the provisions of the act, and prescribe the conditions of such exemption. So, there is full authority to deal with it.

Senator Molson: Mr. Chairman, has the doctor any more evidence for us?

Dr. Krippner: I think it would be pertinent to read into the record the former statement

of Dr. Lauria, who was cited a few minutes ago in terms of the Bellevue cases with which I am in full agreement. Dr. Lauria says in a book *LSD and Society* published this month by the Wesleyan University Press:

I think we are in a real dilemma. In 1964 there were about 70 licensed investigators of LSD, in 1965 39, in 1966 31, currently only 16.

Since the book has come out it has gone down to a smaller number. Here we have some evidence of one kind from Dr. Lauria showing the decrease in research as the laws went into effect in the United States, laws that had absolutely nothing to do with research. The only thing I am pleading for is that in the legislation being considered—and I understand LSD is the first drug to be banned as a restricted drug—no patterns will be set which will in any way damage research. For example, can you think of the difficulty a professional scientist might have with his colleagues if he were to do research with a drug that had been banned as a restricted drug? Why not call it a research drug? Why not do something else to make research possible?

In terms of LSD having no medical use, I would disagree. I think the evidence is very clear. Dr. Pahnke and Dr. Kast have said that LSD is of proven value with terminal cancer patients. This evidence is summarized in this book as well as in medical journals. Both Dr. Pahnke and Dr. Kast are physicians who have done research on terminal cancer patients, and have been able to relieve their pain and ameliorate their condition during the last days of life. I think there is no doubt that there is a demonstrable medical value in LSD.

The Chairman: We are not interfering with that in any way. Do you think we may be, based on what has gone on in the United States?

Dr. Krippner: Yes.

The Chairman: We do not think so, but we will find out.

Dr. Krippner: In addition, let me mention just two other things. The first country which outlawed LSD was South Africa, setting the pace for what has been going on. On the other hand, interestingly enough a great deal of LSD research currently goes on behind the Iron Curtain. No LSD research

goes on in Africa since the drug was outlawed.

Currently an editorial in the *International Journal of Addiction* comments that the United States legislation on LSD may well have brought into the United States a new wave of McCarthyism and those of you who remember the McCarthyism era of the early fifties would, I am sure, dread this to take place. To be specific, the editorial states:

Whether it was wise to dub these drugs as "dangerous" and call in the police to protect us from them is no longer open to question. The police have been brought into the picture. What remains to be seen is whether they will act with restraint, whether the professions concerned with drugs will be bullied, whether black markets and bootleggers and new subcultures are forced into being, and whether, in short, we allow ourselves to be whipped into an "Anslingerist hysteria" about this problem. If that happens, orgies like McCarthyism and the Palmer raids may look pretty tame in retrospect.

A case history was cited in which the police broke into a party of college students, and when they could not find any LSD on the premises they found some codein tablets, called them miracle drugs and arrested everybody in sight. This is typical of what has come about as a result of what I consider ill-advised legislation. Furthermore, legislation is nothing to do...

The Chairman: Before you go on, is it illustrative of that, or is it not illustrative of poor administration and excess of authority?

Dr. Krippner: If the legislation had been clearer the administration would not have been allowed to go to extremes.

The Chairman: Do you not find that at times poor administration in other areas of criminal offence, for instance in the search for a murderer or a person who has stolen money, that sort of thing?

Dr. Krippner: You certainly do. This is why legislation has to be very clear. Another thing which I think legislation must be clear on is what happens to people if you arrest them when they are in the middle of an LSD experience. You may toss them over the edge into a psychosis, which has happened in a number of cases with which I am familiar.

What provision will be made to provide psycho-therapy for these people in their cells while awaiting trial?

The Chairman: Is that the way you test the beneficial effects of the value of legislation, that if a violator of the law is apprehended it may be a bad time to apprehend him because he is in a certain physical or mental condition, and if the law permits him to be apprehended in that condition it is bad legislation?

Dr. Krippner: It is bad legislation because it does not set up a training program for the police to ensure they know what precautions to use during arrest so that they do not harm somebody in this unfortunate condition.

The Chairman: There are differing viewpoints on that, doctor, as you will agree.

Dr. Krippner: No, I do not think there are, because so many police in New York City—

The Chairman: What I mean by that is that I have a different view from the one you are now expressing. If people violate the law they should be apprehended.

Dr. Krippner: That is very true.

The Chairman: If they have to, within the capacity of the persons who apprehend them care is exercised, but there is a limit to what you can expect, and there is a limit to what the violator of the law can expect.

Dr. Krippner: I think it is a question of compassion and humanity.

The Chairman: There is a limit to that too, I think.

Senator Isnor: Have you read this Bill S-21?

Dr. Krippner: Yes.

Senator Isnor: Have you any objection to any clause in the bill, and if so, which clause?

Dr. Krippner: This is the whole point. Canada is embarking on a new type of legislation and will be involved in this in the future. Marshall McLuhan predicted what is going on right now with that sort of changing experience. I think the legislation should be clarified. I think time should be spent in drafting a propitious piece of legislation. This, of course, is one reason for the international conference on LSD to be held in Chicago in February, sponsored by the IL-

Illinois Medical Society, so that they can bring physicians and lawmakers together to propose a model LSD bill which will hopefully eliminate some of these problems.

The Chairman: You acknowledge that this is a potentially dangerous problem. Within the scope of the knowledge we now have certain legislation is being proposed, but legislation is not a static thing. As the area of knowledge increases, undoubtedly the area of legislation will vary and change in its application. You have only to look at the annual statutes in the United States federally and statewise to see amendments to bills coming up because the area has extended, or experience has taught them some more things. We are therefore not creating something now that is static; it will move on. It will move on from this area, and we put no prohibitions in the way of study and research.

Dr. Krippner: I am very sympathetic with your viewpoint, because this is indeed the spirit that I like to see. Our point is that in the United States it just has not worked out this way, perhaps because we have not had legislators of your stature and wisdom. It just has not worked out this way. The laws have been static. In fact, there has been no amelioration of the situation; things have got worse. As far back as 1962 I said that if no measures were taken immediately the criminal underworld would enter the picture, and they have. We now have a much worse picture on our hands than we had before the laws were passed.

The Chairman: Is there any other question? Is there anything else you would like to say on this point, doctor? I have to keep the representations within the limits of the bill.

Dr. Krippner: That is very wise, and I think I have to get back to this senator's question. You ask me if there is anything in the bill I object to. This is not the point. The point is that the bill is too vague and undefined. I think that a further study, or perhaps some definition pushed into the bill, would specifically allow for research, and also special provisions that might be hard to set up once the law is in effect.

The Chairman: I referred you to a section in our Food and Drugs Act under which regulations can be enacted by the Governor in Council providing for exemptions from the

effect of the law and providing for the conditions of exemption, which would be for instance the conditions under which there should be research.

Dr. Krippner: The same thing was done in the United States and the research has gone downhill.

The Chairman: We will have to see what happens.

Dr. Krippner: I hope you will benefit from our sad experience.

The Chairman: We have never turned our back on experience.

Dr. Krippner: That is all I have to offer.

The Chairman: Are there any other questions? Thank you, Dr. Krippner.

Dr. Perry-Hooker, is there anything, within the guidelines that I have provided, that you would like to address yourself to on this? If so, would you come forward and state your qualifications.

Dr. John H. Perry-Hooker, Medfield State Hospital, Harding, Massachusetts: Yes, I am John Hollister Perry-Hooker, age 44. I have a Bachelor's degree in chemistry from the University of Vermont, 1944. I am a Doctor of Medicine, University of Vermont, 1947. My internship was at the training hospital for Dartmouth College. I have had three years of residency training in psychiatry at Norwich State Hospital and Medfield State Hospital in the United States.

I have had one year's training at the Law-Medicine Institute, Boston University, and my attention was directed primarily to this field, the use and traffic in illegal and unauthorized medications.

I have had training and experience at the Bridgewater State Hospital for the criminally insane, and the Norfolk and Walpole houses of correction for men, and at the Framingham House of Correction for Women. I have been the consultant for the district court of West Newton in Massachusetts. I am currently a consultant for the probate court for the district of Dedham. I am now licensed in three states, Vermont, New Hampshire and Massachusetts, and I am supposed to be qualified as an expert in forensic psychiatry. My current position is that of senior psychiatrist in the department of mental health for the State of Massachusetts. I am at the Medfield State Hospital and I am in charge of

legal psychiatry and the day care and after care programs. In addition to this, I maintain a private practice on Beacon Hill in Boston, which is an area in which our intelligent delinquent population lives.

My purpose in being here is to direct your attention to the type of person that this legislation is aimed at. There is no practical way that you can separate the dealers, the distributors and the users. There just simply is no way. I have 83 patients in my current treatment folder. Of those, 48 use LSD socially or for medical reasons. Seven of them use LSD very heavily. Now, of those, two are graduate students; they have a bachelor's degree, they have a master's degree, they are working on their doctorate.

The age range of these people is 16 to 26, with one person being 36. The average age is 20. Of those, 37 have completed high school, 29 are currently in college, 4 are graduates and 3 are graduate students. All of these boys—they are all young men, with two exceptions—all of these people, I think, from reading your proposed statute, would come under its terms.

These people obtain LSD illegally, and through unauthorized channels. They use things that are not standardized. They take turns in getting hold of this, knowing full well that if one person does it that sooner or later he will be caught but that if there are a dozen people who take turns getting it and bringing it into Boston, splitting it up, then the risk is minimized. Of these 48 people—if you would apply the penalty of this act, you will deal with child of one of our highest administrative officials in the State of Massachusetts; you will deal with the son of a legislator; you will deal with the son of a prominent dentist, and you will deal with two sons of prominent physicians. All these kids are sons of prominent people. That is one of my problems. I have in treatment two boys who are sons of prominent attorneys. Since my words will reach the United States, I cannot identify one especially, but I will say he is a high official in the state. Several of these boys are sons of prominent industrialists. Most of them are of the middle class or upper class.

The practical experience in Massachusetts has been that our right to practice medicine has been interfered with. Our physicians are naturally reticent. They avoid the limelight, and they prefer to avoid any dealings with the law.

At Medfield State Hospital we have an admission rate of over 500 people a year, and in 1966 the primarily problem of 208 of these people was alcohol. We have used LSD as a pilot project in the treatment of these people, under the sponsorship of Dr. Harry Freeman who is in charge of clinical research. We had to stop this. We have packed up our supplies of medication and sent them back. So that Medfield is no longer able to do research.

A practical consequence of legislation of this type is that in Boston we are at the stage of interference with the lives of students. In the Beacon Hill area where I am, it is quite common for the police to invade apartments at night and conduct illegal searches and seizures.

Now, technically and finally, these boys can be acquitted, but the publicity, the notoriety, has a lasting effect on their futures—and the majority of these people are college students. There is an alienation of these boys from the due process of law. They view the moral standards of their elders with contempt. There is only one standard that I can apply to these people, and that is the standard of danger.

This is a dangerous drug. However, comparatively, compared to other medications that physicians use ordinarily, in their ordinary practice, it is not a dangerous drug. In my personal professional experience, LSD is beneficial in certain types of patients, but I cannot legally prescribe it. I would not even attempt to. I cannot keep ordinary clinical records. I have to maintain double sets, one for public inspection and one for my own private information.

I would just mention that one of the reasons that people do take LSD is that it does, in my experience, make people less combative, less rowdy.

I have one young man in particular who was in street fights and night fights and other kinds of delinquent activities. After taking unauthorized LSD, half a dozen times over a period of a few months, his personality changed and he is quite a peaceful and docile young man.

At our state hospital, particularly with patients that are what we call obsessive-compulsives, we would like to be able to use this drug, but under current standards we cannot do this in Massachusetts. In summarizing, I will say that there is simply no practical way

that you can separate the dealer from the user.

The Chairman: Any questions?

Senator Pearson: Where would the dealer obtain the LSD?

Dr. Perry-Hooker: In Boston there are two principal sources. We have very fine chemistry faculties and almost every graduate student in chemistry is able to manufacture this substance. Almost any graduate student in the Cambridge area.

Senator Pearson: That would be unauthorized, though?

Dr. Perry-Hooker: It is unauthorized, but there is no practical way of stopping it. The other main source is still in Boston what they call "osley tablets" which are manufactured illegally in a western state.

Senator Aseltine: Do the students manufacture their own LSD?

Dr. Perry-Hooker: Yes, any competent student can.

Senator Aseltine: What training do they need in order to be able to do that?

The Chairman: None.

Dr. Perry-Hooker: Almost none. I am a graduate student in chemistry myself, and although I have not done any work in chemistry at all for over 25 years I think I could get together the proper equipment and do it.

Senator Molson: You recommend, then that nothing be done to prevent the indiscriminate non-medical use of LSD? Is this your point, doctor?

Dr. Perry-Hooker: My point is that it should be handled like any other ordinary powerful medicine that a physician uses.

The Chairman: Like morphine?

Dr. Perry-Hooker: Like morphine, codein, digitalis, cortisone, belladonna, and so on. It is irrelevant, but currently the most single disrupting drugs to these students are the amphetamines. There is no really practical way to control this problem. People who use LSD are, essentially, not dangerous. People who use amphetamines are very dangerous.

Senator Baird: And it is not habit-forming.

Dr. Perry-Hooker: LSD is not habit-forming.

Senator McDonald: You say that people who use it are not dangerous?

The Chairman: People who use LSD, he said, are not dangerous. What do you mean by that?

Dr. Perry-Hooker: There is a problem. You have to establish a standard of danger, but relatively speaking compared to many other common substances it is not dangerous.

Senator McDonald: Are the people not dangerous or is the use of LSD not dangerous?

The Chairman: Dangerous to themselves or to the public?

Senator McDonald: That is the second question.

Dr. Perry-Hooker: My experience with LSD is that it produces a toxic psychosis, if you take inordinate amounts of it, which does produce, according to the personality structure or the mental illness present, certain effects. If ordinary students take LSD they lose their sense of time. They may have visual phenomena. They usually are peaceful. They have an exaggerated imagination, but it is all soon over. It is over in eight or ten hours. Occasionally, however, people will be disturbed for several days. If someone who is a schizophrenic or a paranoid schizophrenic takes LSD, then you are in trouble, but even so you are in less trouble than if he were to take alcohol and in far less trouble than if he were to take amphetamines.

Senator Thorvaldson: Speaking of dangerous drugs, how do you classify heroin, for instance, as against LSD as being a dangerous drug? I ask that just for the comparison.

Dr. Perry-Hooker: I have only one patient who uses heroin to any extent. In his case there certainly is little physical danger connected with it. It is essentially a preservative.

Senator Thorvaldson: That is heroin?

Dr. Perry-Hooker: Heroin, yes.

Senator Everett: Then, doctor, what you are suggesting is that LSD should be available through a physician's prescription. Is that correct?

Dr. Perry-Hooker: That would be my recommendation, yes.

Senator Everett: If it can be made by any graduate chemist, then what does the restricting of it to a physician's prescription do for us?

Dr. Perry-Hooker: I think it sets a reasonable standard that this current generation growing up will accept.

Senator Everett: Presumably, when a physician prescribes morphine or belladonna or digitalis, he has a medical reason for doing so.

Dr. Perry-Hooker: That is correct.

Senator Everett: Not a research reason, as a general rule.

Dr. Perry-Hooker: Well, medical reasons, you say. Our research project was essentially a medical project.

Senator Thorvaldson: I have just one other question. I am assuming that in Massachusetts you have narcotics control similar to that which we have here in Canada under our Narcotics Control Act. Would you suggest that LSD might come within the provisions of a narcotics control act and be controlled in the same way as narcotics are? Would that be more feasible or logical?

Dr. Perry-Hooker: It could be included in such a situation, I would expect. However, it is not habit-forming and it produces no physical addiction, so it would probably end up as a separate category.

The Chairman: Are there any other questions? We have one more witness.

Senator Burchill: I just wanted to ask the doctor one question on something I am just not clear on. You say doctors have prescribed LSD in the treatment of certain patients, and you were just mentioning some of those.

Dr. Perry-Hooker: Yes.

Senator Burchill: They have been unable to get a supply, however, so they have had to stop treating such patients. Is that correct?

Dr. Perry-Hooker: That is correct, yes.

Senator Molson: Mr. Chairman, if I may, I am not quite clear on the answer that the doctor gave me a moment ago. I am not sure whether he is in favour of the unrestricted availability of LSD. I think what he said sounded rather as though he were, but that was offset by his answer to a later question

referring to LSD being available under the prescription by a registered physician. Now, would you consider that legislation which did not prohibit its use or sale to physicians by prescription as satisfactory? I want to know what your point is on this doctor.

Dr. Perry-Hooker: If I may point out our essential problem, alcohol is used socially and medically; marijuana is used socially and there is some evidence that there is medical benefit from some of its substances; coffee is used socially and caffeine is used medically. So we have a substance here that can be, is and will be used in two ways. The students use it socially. I expect that now 60 per cent of the graduate student body in the area of Boston use this at least occasionally socially. So we have a substance which is being used socially by the generation which is growing up. We also have a substance that has a proper medical use. Now, speaking medically, I do not think anyone should use any unauthorized drug or medication without a physician's authority.

Senator Molson: Would that include LSD?

Dr. Perry-Hooker: That would include LSD.

Senator Molson: Then you are not in favour of the unrestricted availability of LSD; rather, you are in favour of its availability under a physician's prescription.

Dr. Perry-Hooker: No, I am not in favour of the unrestricted availability, but I must accept the fact that it is so used and will be.

Senator Molson: Yes, but that is not the point. I want to know your position on it.

Dr. Perry-Hooker: My position is, medically, that it should be available on prescription.

Senator Molson: Thank you.

Senator Everett: I wonder if I could ask the doctor one question. If the prohibition was that LSD could only be used on prescription, would he agree that there should be a penalty against the physician for prescribing LSD for purposes other than research or valid medical use.

Dr. Perry-Hooker: Yes. I think it should be a misdemeanour.

Senator Everett: Thank you.

The Chairman: The last witness is Mr. K. Izumi, from Regina, Saskatchewan.

Mr. K. Izumi, Architect, Regina, Saskatchewan: Mr. Chairman, I come here rather unprepared, and I ask you whether the citing of my experience is relevant to the particular issue at hand? I think it is a matter of opinion. However, I would like to have the opportunity to present another side of this subject, because there is one area of relevance concerning the draft amendment which has just been handed to me. I would like to deal with the question of the amendment, following the background leading to this question.

The Chairman: Well, the draft amendment has not been considered by the committee yet.

Mr. Izumi: What I have to say might be pertinent if such a draft is going to be considered.

The Chairman: I cannot predict for you what decision the committee will make in relation to this proposed amendment.

Mr. Izumi: I would just like briefly to state that I am neither a psychiatrist, a physician nor a psychologist. I am an architect, and based on that I wonder whether the members of the committee would wish to hear what I have to say.

The Chairman: It is not a question of hearing what you have to say; it is a question of hearing representations which are relevant to the substance of this bill. The substance of this bill deals with the prohibition as to possession, and possession for trafficking and for providing penalties. That means if it is potentially dangerous drug, should there be these prohibitions. That is the situation into which this resolves itself.

Mr. Izumi: In that regard, I am concerned with another aspect and that is the area of research. I am concerned with the kind of questions that have been raised with respect to the use and the limitations for medical purposes, and so on.

The Chairman: Even if this bill becomes law, there is nothing in our food and drug law which would prevent the Governor in Council from passing a regulation which would exempt research and provide conditions for research in connection with this particular substance.

Mr. Izumi: I think what I have to say only pertains to the research aspect of it and I wonder if the honourable senators are of the

opinion that they would like to hear what I have to say.

Senator Isnor: Give him the opportunity, Mr. Chairman.

The Chairman: All I have been speaking to are the limitations within which you should make your representations. We are not getting into a debate on the virtues, etc., of this particular product.

Mr. Izumi: My name is Kiyoshi Izumi and I am a partner in the firm of Izumi, Arnott and Sugiyama, Architects, Engineers and Planners. My educational background is Bachelor of Architecture from the University of Manitoba, Master in Planning from MIT. I have also attended the London School of Economics, and the Architectural Association School in London to study the social sciences, economics, law, and so on. I am located now in Regina, Saskatchewan. I am a member of a variety of professional associations and my current and some recent activities have been as consultant and advisor to various bodies, including the Advisory Health Group of the National Building Code, the Associate Building Committee of the National Building Code, the Architectural Advisory Committee of Expo and the Scientific Advisory Committee of The American Schizophrenia Foundation.

I was a member of the survey team on mental health for the National Institute of Mental Health in the United States. I assisted in the drafting of the new design and construction standards for the psychiatric hospital for our own Department of Health, and I have acted as adviser to a number of hospital projects both in the United States and Canada. Currently I am advising on the psychological and architectural research in a variety of universities both in Canada and the United States.

My relationship with LSD arises from the problems I encountered in designing facilities for the care and treatment of the mentally ill. In 1957 I participated in the use of LSD to get a better understanding of the nature of the problems of the mentally ill. I was made particularly aware of the perceptual difficulty which is pertinent in architectural design. Subsequently I have taken LSD under very carefully controlled conditions, and as a result of this kind of thing and its relevance not only to the physically but particularly to the psychologically handicapped people, I have expanded my work and published

papers and given papers and participated in discussions with respect to the psychologically handicapped.

Senator MacKenzie: What was the nature of the control when you took LSD?

Mr. Izumi: The first experience with LSD was uncontrolled in the sense that Francis Huxley, Dr. D. Blewett, Dr. H. Osmond and Dr. A. Hoffer were involved and it was thought that I should participate in this experience as they put it, to just enjoy the experience. The subsequent experiences were under controlled hospital conditions in the Saskatchewan Hospital at Weyburn and the University of Saskatchewan Hospital.

Senator MacKenzie: How long did the control carry on?

Mr. Izumi: Until I was completely free of the effects of LSD. In each of these situations it was structured that I participate, for example, in the other patients' day-to-day routine, specifically in terms of the architectural interest which I had. I would ride up and down various types of elevators, walk up and down various types of stairs, look out certain windows, and go to the top of a high-rise building and so on, and so learn to understand some of the behavioural difficulties arising from these perceptual problems that arose.

Subsequent experience has shown that in my particular case, and this is where it is a very subjective thing and not at all an objective kind of study such as the other people have presented, that I have been able to understand the nature not only of the varieties of the mental illnesses as we have defined them, schizophrenia and so on, but also the problems faced by the mentally retarded, the mentally defective, the alcoholic, the narcotic addict, the autistic child, the emotionally disturbed and the aged. From my discussions with my colleagues, the psychiatrists, the psychologists, the anthropologists, and so on, and through the use of LSD I have been able to establish a kind of empathy with this variety of people suffering from physical and psychological handicaps.

Senator MacKenzie: Is there a continuing process as a result of this or have these effects come completely to an end?

Mr. Izumi: Well, I have retained some of these effects. One of the interesting phenomena is that I have been able to communicate

better with the social scientists who are particularly involved in this. For example, Mr. Schoenbaum in his book *Planning Facilities for the Crippled Child* talks about cerebral palsy, and as a result of these experiences and as a result of reading I began to sense and understand their perceptual problems. He mentions, for example, that the nature of privacy is very significant for these children, and I appreciate what he is getting at; and I am able to think in terms of the physical environment which would minimize some of the psycho-social problems they face.

Senator Pearson: Were you able to communicate easier with the mental patient?

Mr. Izumi: Yes. My interest in this is not from the medical point of view, but from the point of view of the use of this kind of drug and others which would be the vehicle for many of us who are presumably classified as normal to begin to understand the nature of the problems of others. I have looked at it from the point of view of the physically and psychologically handicapped people, and my interest in the legislation is to see that it does not curtail this kind of research.

In the United States there had been other architects and creative artists and people involved in the design of the physical environment, as it were, starting to do some research, and I understand it has been completely stopped, not because, as the others have pointed out, there is any specific restriction but because, in part, there is a planted fear to do this because of some of the adverse publicity.

The Chairman: Would your answer to the question which was asked of the last witness—as to the conditions under which he would support the use of this product—be the same? In effect, he said to have it available under supervision or on prescription.

Mr. Izumi: Yes, I would agree it could be highly dangerous—and when I say “dangerous,” it is a matter of opinion. I appreciate this because, quite frankly, although a product of western culture, a born Canadian educated in Canada and Europe, and so on, I have the Oriental background and my sense of perspective in this respect, in many cases, I find, is in opposition to contemporary western thought.

In this respect I would like to touch upon the philosophy, as it were, of the kind of legislation you are presenting, and I feel I am young enough to represent or to sense the

feelings of the group that Dr. Perry-Hooker talked about, in terms of its rebellion towards the so-called government of laws. I would point out to you that unless the law considers not purely the intelligence of the individual but also his emotional and other drives behind it, the law will not be successful.

In this respect, as a long-standing member of the National Building Code, and as a professional planner, I have had some experience in drafting planning legislation, design standards, construction codes and the National Building Code, and I can assure you that unless the regulation is very carefully drafted and precise—and it must leave no room for *ad hoc* subjective interpretation at the administrative level—you might as well not have it at all, because all kinds of exceptions and all kinds of problems arise with which it is very difficult to contend.

I would like to refer to this amendment—though Mr. Chairman has suggested it is not under consideration—clause 47(1). This is the draft amendment. If such a clause is inserted I would wonder if the paper I have just completed for the Neuro-Psychiatric Research Department in New Jersey, *LSD and Architectural Design*, would be prohibited? This is to be published by Doubleday. I do not advocate the use of LSD, but it is an attempt to write objectively of my own subjective experiences with LSD and its assistance, in this particular case, in the design of facilities for the mentally ill.

The Chairman: You have given the answer yourself. You have interpreted as to whether what you have written would come within this section. You have concluded it would not, and I think you have reached the right conclusion.

Mr. Izumi: Except I feel, with the view of the current situation, some people would say I am advocating its use.

The Chairman: I do not care what some people would say. Would you say you are advocating in the paper you have written the use of a restricted drug whether by “possession, possession for trafficking or trafficking”? Is that the purport of your paper?

Mr. Izumi: No.

The Chairman: If it is not, then it would not touch you.

Mr. Izumi: Except one can read the first part of it...

The Chairman: I would not go looking for liability.

Mr. Izumi: No, I am not looking for liability. Others have, and I have enough inquiries and letters to indicate this can happen.

The Chairman: Is there anything else you want to say, Mr. Izumi?

Mr. Izumi: No, Mr. Chairman.

The Chairman: Any questions? Thank you very much.

We have now concluded the evidence on this, unless there is something further you might want to ask some of the officials from the Food and Drug Division who gave their evidence some days ago.

We have before us this suggested amendment to incorporate the ideas that were put forward by Senator Molson. In view of the publicity that our consideration of this bill provoked last year and some of the things that have been said during this session, in relation to this amendment, even when we consider the effect of it, I was wondering if we should not have an adjournment of its consideration and invite the newspapers or some of those in the reporting field to come here and let us have their views in relation to whether, in their opinion, they think there is any restriction of the freedom of speech or the freedom of the press in the scope of this amendment. Frankly, I do not think there is, but I think we should give them an opportunity of expressing their views.

Senator Aseltine: It looks pretty drastic to me.

The Chairman: Being drastic and being restrictive of the freedom of the press or speech may be two entirely different things.

All this amendment provides for is a prohibition that:

No person shall teach or advocate by word or deed or any other means of publication or communication whatsoever the use of a restricted drug,

...in this case, LSD...

...whether by possession, possession for trafficking or trafficking...

Senator Pearson: What do you mean by “teach”?

The Chairman: Supposing Professor Leary or Doctor Leary, or whatever you call him, who is quite a public figure in relation to this particular substance in the United States, came into Canada and made a speech which, while it might not teach anything, might advocate the use of this drug, for which he might give many reasons, and if he advocated the use of the drug by way of possession, possession for trafficking or trafficking, then he would come within the prohibition of this section.

Senator Thorvaldson: Mr. Chairman, it seems to me that if this amendment were passed into law it would mean that all of these gentlemen who have testified before this committee this morning would be subject to arrest.

The Chairman: I do not think so.

Senator Thorvaldson: I should like to hear comments on that.

The Chairman: I do not think so, because both the last two witnesses said they agreed that the use of this particular substance should be under prohibition, or under some form of control.

Senator Thorvaldson: But at the same time the reason for saying that is that in the opinion of at least some of them this substance should be continually under research. There should be research done in the future in regard to it, because that additional research might show that this is a valuable substance which, under proper control, would be useful to humanity. That is what I gather from what they have said this morning, but I may be wrong.

The Chairman: You must go back to the basics. First of all, in the Food and Drugs Act there is authority to make regulations, notwithstanding the generality of the prohibition in relation to any particular substance, and to prescribe the conditions under which research, for instance, might be done.

Senator Thorvaldson: I am very fearful of regulations. I think it is the duty of Parliament to say what it means in regard to this legislation. I think it is our duty first to find out more about this substance in the light of the testimony we have heard this morning.

The Chairman: I am in the hands of the committee. Senator Molson and the committee generally last session seized upon this idea of attempting to have some restraint placed upon people who preach and teach and advocate and encourage the use of this drug. It is now in the hands of the committee.

Senator Burchill: Mr. Chairman, there is nothing to prevent the use of a restricted drug. There is nothing in our general legislation to prevent a physician from prescribing it, is there?

Senator Molson: Yes.

The Chairman: Well, Dr. Hardman says there is no available source of supply, and dosages et cetera are not settled at this time. If this bill becomes law the only offences that are stipulated are those of selling LSD, of having it in your possession, of having it in your possession for trafficking, or of trafficking in the drug. The question then is whether within that area you could do research without some regulation under the Food and Drugs Act, or whether a doctor could prescribe—well, it would present some problems that would have to be considered. A doctor might still be able to prescribe, but a problem would arise in respect to the source of supply. That source of supply, without some help from regulations under the Food and Drugs Act, might be in possession, and being in possession might be something that is prohibited by the bill that is before us.

Senator Pearson: That is in section 45(3) of the bill.

The Chairman: Section 45(3)?

Senator Pearson: Yes. How can they prescribe if there is no such thing as the drug? Nobody is allowed to have possession of it...

The Chairman: Where is this?

Senator Pearson: Section 45(3).

The Chairman: We are not looking at the same thing.

Senator Pearson: It is on page 4 of the bill.

The Chairman: Yes, at the top of the page.

Senator Pearson: Subsection (3) of section 45 reads:

In addition to the regulations provided for by subsection (1), the Governor in Council may make regulations authoriz-

ing the possession or export of restricted drugs and prescribing the circumstances and conditions under which and the persons by whom restricted drugs may be had in possession or exported.

The Chairman: Yes, it is "prescribing the circumstances and conditions".

Senator Pearson: How can you have research if possession is...

The Chairman: You can only have research if you have the regulations you indicated which will permit research.

Senator Everett: Mr. Chairman, perhaps I am out of order, but I am wondering whether it would be possible to hear from the officials as to whether or not a clause in this bill stating that a physician can prescribe it for medical or research purposes...

The Chairman: While we are on that aspect of it I would suggest that this is a legitimate area for us to explore, and I think we should instruct those who are here supporting the bill from the department to examine into that aspect of it. Have you anything you would like to say on that now, Dr. Hardman?

Dr. Hardman: Yes, Mr. Chairman, I think so. The drug is contained in Schedule H, and there is an absolute prohibition. However, in Division 7, at the top of page 126A, are the regulations under which the drug is legally made available by the minister to institutions. Those regulations are in existence now.

The Chairman: I am talking about this particular drug.

Dr. Hardman: Yes, LSD.

Senator Everett: That does not answer my question. He is talking about the granting of these drugs to institutions. I am talking about the right of a physician to prescribe the drug for research purposes or medical purposes.

Dr. Hardman: No.

Senator Burchill: He cannot do it.

Senator McDonald: Will the regulations to which you refer have the same effect when LSD is moved from Schedule H to Schedule J?

Dr. Hardman: I would like to refer that question to my legal colleague.

M. G. Allmark, Assistant Director General, Food and Drug Directorate: Yes, I would say there would be no interference whatsoever with the meaning of the use of LSD in this particular instance.

The Chairman: So, even if this bill becomes law in the form in which it is now, or as it may be amended in the particular way we are discussing, there is nothing in the present state of the law or the regulations which would prevent the continuance of research in relation to LSD?

Mr. Allmark: None whatsoever.

The Chairman: And there is nothing which would permit, now or thereafter, a physician to prescribe LSD?

Mr. Allmark: That is right.

The Chairman: So that would be an offence. Inferentially it might be an offence for him to prescribe, but somebody has to be able to find it first.

Senator Pearson: Yes, that is exactly my point.

Senator Everett: Would it be possible for the committee to examine that possible amendment?

The Chairman: Yes. I do not think it is something that you want to make a snap decision on. What we should do is have Dr. Hardman and Dr. Crawford and the other representatives here from the Food and Drug Directorate to study this aspect of it, and report to us at our next meeting. They might also at the same time consider, and express a view on, if they wish, what has been presented by way of amendment today.

Senator Thorvaldson: I would also suggest they give us their views in regard to the problem of research. I am sure the committee would want no obstacle placed in the way of the supply of LSD to these research people.

The Chairman: No. Dr. Hardman and Dr. Crawford have both said no that under the regulations as they now exist the minister makes available to institutions this drug for research, and there is nothing in this bill which would cut that off. So, that question is dealt with.

Senator Pearson: Except for possession.

Dr. Perry-Hooker: I have just one comment to make. When you have a publicly

appointed and publicly paid body of men which makes the decision whether the drug is to be allowed to be used for research purposes, is there anyone in Canada with sufficient courage to do this in the face of the notoriety and bad newspaper...

The Chairman: You may be surprised at the answer you will receive. I know what it is. Dr. Hardman?

Dr. Hardman: According to our records, in the last year there have been some 20 institutions in Canada that have procured supplies legally.

The Chairman: Yes. It is not often that you get such a fast answer to a question.

Senator Molson: Might I ask Dr. Hardman and his associates to consider the question: Why should LSD not be available for prescription in the same way as many of these other dangerous drugs and narcotics are?

Dr. Hardman: The experience with this particular drug indicates that it is not the direct action by itself that is effective. The studies which are being carried on are studies of a total regime. It is a psychiatric counselling. The drug enables the psychiatrist to communicate with his patient, so that measures of its effectiveness are more measures of effectiveness of the psychiatrist's work than they are of the actual drug action. Our concern at the present time is that all members of the medical profession generally do not have the broad experience in this type of work. The drug would not be of use to the majority of members of the profession. It is of use in research and in certain clinical studies to people who have special training in its use. You cannot compare it with digitalis, which is a drug with a direct action in a disease. This is a method employed by psychiatrists as part of a total counselling program.

The Chairman: It may be true that within the area you have described there should be some consideration given by way of regulations so as to permit controlled use.

Dr. Hardman: The problem with our regulations is that one of the schedules enables a drug to be handled through drug stores and through outpatient departments to be administered in the home. From the information we have available about LSD at the present time we feel that until we have more scientific

information about its value it should be restricted to an institution. In other words, these people must be under careful observation during the period in which the drug is having an effect. There is no mechanism in our regulations to restrict a commonly prescribed drug only to hospital use. The net effect of this particular regulation as it is presently employed is that in those institutions that have been given exemption to purchase the drug a number of psychiatrists are using the product on their patients in the institution.

The Chairman: If it has that application why should the psychiatrist be authorized to make use of it only in treating a patient in an institution, where it must have some beneficial effect, and not be able to secure it for the treatment of a patient outside an institution?

Dr. Hardman: Comparing this with other drugs, the pharmaceutical company which put in the submission on this particular drug has been trying to get clinical studies to provide evidence since about 1952. The research workers to whom they have distributed this drug have not supplied scientific evidence to enable them to make a submission to make it freely available. In fact, the company has withdrawn from the distribution of this drug; it does not want its name to be associated with the use of this drug in the United States, the United Kingdom or in Canada, and we have had to make special arrangements with this company and a public agency in Canada to make this drug continually available to research workers in Canada. The department has had to go out of its way to make sure the drug was available in Canada for research.

Certainly there is not as vast a body of scientific information about the use of this drug as we have on other drugs permitted in the market. It just has not measured up as well. We are not saying this evidence may not be presented, but compared with the efficacy of other drugs coming on the market today it just does not measure up at this time.

Senator Leonard: What do you mean by "measure up"? Measure up to what?

Dr. Hardman: Our drug regulations require the manufacturer wishing to sell a drug in Canada to provide evidence of the efficacy of the drug and the conditions of use

under which the drug may be administered, and those hazards associated with its use. This is a general drug regulation. The information we have on LSD supplied by the manufacturer, and from the literature generally, is not equal to that which has been supplied on any other drug which has come on the market recently.

Senator Leonard: I take it there is no such thing as supplying this drug to physicians and doctors who may be interested in personally carrying on investigations or research?

Dr. Hardman: Not at this stage of development of the drug.

Senator Molson: At the present time I take it it is released only to institutions?

Dr. Hardman: That is correct, because in these institutions they have research committees which control the use of the drug within the institutions.

Senator Molson: On the other hand, I take it that narcotics are issued to physicians, but not this drug?

Dr. Hardman: Heroin no, sir. Heroin is banned in Canada, but other narcotics have a demonstrated medical use.

Senator Molson: Is there a wide list of institutions permitted to use the drug?

Dr. Hardman: I would say it is not a wide list. Most of these are associated with medical schools, and the research is of two types. There is research in a laboratory which works in different areas of the medical schools or para-medical schools, and also that carried on in a psychiatric institution. It is not wide, in that we have 12 medical schools in Canada and a limited number of institutions that are working in this area.

Senator Thorvaldson: Are all the medical schools working in this area?

Dr. Hardman: No sir.

Senator Thorvaldson: But they could?

Dr. Hardman: They could.

Senator Thorvaldson: You have no limitation on any hospital which wishes to go into research provided it has a proper organization, facilities, and so on?

Dr. Hardman: Most of the major hospitals are associated with universities. Such types of hospital carry out research.

Senator Everett: It seems to me that the points raised by the doctor indicate that we should have another meeting on this matter and perhaps hear from representatives of the medical profession as well, as to whether or not there should be an amendment to the act.

The Chairman: I was going to suggest that consideration of this bill should be deferred until our next meeting, which will be next Wednesday in the ordinary way. Is that agreeable? Do not throw away the draft amendments that we have given you, because they will be discussed next time.

Senator Grosart: I wonder if I could make a comment on the question raised earlier, as to the desirability of having the press present as witnesses or otherwise on the discussion of this amendment. I make the comment because I understand Senator Molson's viewpoint and sympathize with it. On the other hand, I also understand the reason why in certain circles, of those particularly interested in preserving the freedom of the press and the freedom of speech, there is an objection to it. If we say here that it is an offence now to advocate that you break the law—which is what this amendment says—do we carry this into our other acts? It is true that we say in one area it is an offence to incite to riot, but we circumscribe this pretty carefully.

The Chairman: Senator, would you stop right there? In the Criminal Code there is provision in relation to counselling to commit any offence, and I would think advocating is a form of counselling. Even without the words defined in here, I would think that under the Criminal Code, that if some person counsels some person to use this restrictive drug, whether by way of possession or trafficking, that he may be charged with an offence of counselling, under counselling somebody to use this drug in this form, in violation of this particular act.

We also have, under the aiding and abetting sections in the Criminal Code, under which some person who perhaps aids and abets in the trafficking or in possession, can be charged the same as a principal. So there is a wide area now.

Senator Grosart: I agree with this, but if this is so, if it is already covered by the

Criminal Code, in respect to teaching or advocating by word or deed the use of a restrictive drug—in other words, this says it will be an offence, with certain penalties, if you counsel, if you teach or advocate, that this law should be broken by somebody. Now, if that is in the Criminal Code why put it in here?

The Chairman: These words have been selected because they do not come within the description of aiding and abetting, and the word "teaching" may not come within the description of the word "counselling".

Senator Grosart: This brings me back to my point.

The Chairman: We are in semantics now, and we have decided to put this bill over until next Wednesday.

Senator Grosart: I am not a member of the committee and may not be at the meeting next week, but as I have been a member of the press I understand and sympathize with the objection of the press, which is, in my view, a question of the freedom of speech. There may be a proper curtailment. I am not arguing that, but it is curtailment.

I hope the committee will consider it very carefully in that light and take a hard look at this suggested amendment before calling in the press to have a look at it again and subject the committee to the kind of criticism that was made before.

The Chairman: If further consideration of this bill is deferred until next Wednesday...

Senator Thorvaldson: Before you do that, may I make one suggestion. I understand that probably the most knowledgeable man in regard to LSD is a certain Dr. Hoffer of Saskatchewan, and if that is the case I wonder whether we should not have him testify before the committee. I do not know if he is, but I have heard his name mentioned several times and I think he was referred to at one time as a physician who had done a great deal of study on the subject of LSD. If that is so, could we not have him heard here?

The Chairman: We will look into it. Further consideration of this bill is deferred until next Wednesday.

Senator Molson: Mr. Chairman, before we adjourn I would like to refer for just a moment to Senator Grosart's comments about the observations we had received from the press and news media. He expressed sympathy with my point of view, but I rather object to this guilt by association suggestion that came up here. I think the committee has been working on the problem that is suggested by the amendment. It is true that the initial suggestion was mine, but I would like to say now that since we withdrew the original amendment I am not aware of any objections being received from the news media, and if Senator Grosart has been informed of some objections I think he should tell the committee. I have heard of none and I don't know whether you have.

The Chairman: I haven't. I think the senator may have been working on the basis of the old laws whereby the matters which arose at the last session did not get into the bill. The only thing I have seen in the newspapers is an editorial which contained a criticism of certain things which the sponsor of the bill in the Senate said and which referred to the press. My suggestion about hearing the press was issued to give them an opportunity to state their views here.

Senator Molson: The new amendment is specifically directed, I think, to not curtailing any freedom.

The Chairman: If that is the case they will tell us, and Senator Grosart as a former working member of the press will know that himself.

Senator Grosart: Mr. Chairman, I admit my remarks were gratuitous and were based on my own experience that you will get the same kind of objection.

The committee adjourned consideration of the bill.



THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>),
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47).

Ex officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, November 6th, 1967:

"Pursuant to the Order of the Day, the Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill S-25, intituled: "An Act respecting London and Midland General Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 22nd, 1967.

(13)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 12:35 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Benidickson, Burchill, Croll, Everett, Gélinas, Gershaw, Gouin, Irvine, Isnor, Leonard, MacKenzie, Macnaughton, McCutcheon, McDonald, Molson, Pearson, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt and Walker. (23)

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel; R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

On motion of the Honourable Senator Burchill it was *Resolved* to report as follows: Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill S-25.

Bill S-25, "An Act respecting London and Midland General Insurance Company", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

London and Midland General Insurance Company:

David F. Alexandor, Parliamentary Agent.

On Motion of the Honourable Senator Molson it was *Resolved* to report the said Bill without amendment.

At 12:45 p.m. the Committee proceeded to the next order of business.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 22nd, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-25, intituled: "An Act respecting London and Midland General Insurance Company", has in obedience to the order of reference of November 6th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 22, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-25, respecting London and Midland General Insurance Co., met this day at 12.35 p.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: We have before us now Bill S-25, which is a private bill. As it originated here, I think we should have the usual motion to print our proceedings.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: We also have the Superintendent of Insurance here, Mr. R. R. Humphrys, who will give an explanation in regard to the bill.

Mr. R. R. Humphrys, Superintendent, Department of Insurance: Mr. Chairman and honourable senators, the purpose of this bill is very simple. It is merely to change the name of the London and Midland General Insurance Company to Avco General Insurance Company, and, in French, L'Avco, Compagnie d'Assurance Générale. That is the sole purpose of the bill.

May I say that the existing company, the London and Midland General Insurance Company, is a federally incorporated company, having been formed by special Act of Parliament in 1948. It is registered with our department. It is owned by the Avco group of companies, the parent company being in the United States. There is a holding com-

pany in Canada that holds a group of companies engaged in the business of acceptance, lending and insurance. All companies in the group are using the name Avco as part of their name, to identify the family of corporations. This is the purpose in seeking this authority.

Senator Pearson: How many subsidiary companies are affected in Canada?

Mr. Humphrys: This change will affect only this one insurance company. They have a number of other companies in the group but they are not our concern.

Senator Pearson: They have the name?

Mr. Humphrys: Many of them have the word Avco in the name.

The Chairman: Some representatives of the company are here, namely, Mr. H. P. Paterno, President of Avco Delta Corporation Canada Limited, and President of the London and Midland General Insurance Company; Mr. C. J. Connell, Group Vice-President, Avco Delta Corporation of Canada Limited, and Vice-President, London and Midland General Insurance Company; and Mr. K. R. Kirkpatrick, Vice-President and General Manager, London and Midland General Insurance Company; and Mr. David F. Alexandor, Parliamentary Agent.

With the very brief and succinct explanation which the Superintendent of Insurance has given, and with the readiness I detect in the committee to report the bill without amendment, I wonder whether any of these gentlemen have anything they would like to add, in the circumstances.

Mr. David F. Alexandor, Parliamentary Agent: Mr. Chairman, all I would like to say is that the primary reason for the request to this honourable Senate for the

change of name is to make the name Avco part of a corporate name of this insurance company, in line with six other companies in the same group. There is one other point. There is a company by the name London and Midland Insurance Company, in the United Kingdom, which went bankrupt recently. There is no relationship between the British company and this group, but it caused considerable embarrassment to this company, which had to contact 6,000 Canadian representatives and many policyholders as well.

I would also add that there are a number of companies in Canada with the word "London" included in the name. Those are basically the three major reasons for the change requested.

Senator Everett: I apologize for having a question. I wonder if this insurance company was incorporated originally in 1948 by the Avco group or by someone else?

Mr. Humphrys: No, Mr. Chairman, it was not.

Senator Everett: Can you tell me when that was done?

Mr. Humphrys: Avco acquired control in 1962. We have had a search made.

The Chairman: Is it the wish of the committee that I should report the bill without amendment?

Hon. Senators: Carried.



Second Session—Twenty-seventh Parliament
1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 13

First Proceedings on Bill S-22,
intituled:

"An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code".

WEDNESDAY, NOVEMBER 22nd, 1967

WITNESSES:

Department of National Health and Welfare: Dr. J. N. Crawford, Deputy Minister; R. E. Curran, General Counsel.

Others: Alan B. Archer, Trustee, Toronto Board of Education; J. Chevalier, Secretary, Canadian Manufacturers of Chemical Specialties Association.

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THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47).

Ex officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, November 6th, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Basha, for the second reading of Bill S-22, intituled: "An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator McGrand, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 22nd, 1967.

(14)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 12:45 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Baird, Benidickson, Burchill, Croll, Everett, Gélinas, Gershaw, Gouin, Irvine, Isnor, Leonard, MacKenzie, Macnaughton, McCutcheon, McDonald, Molson, Pearson, Smith (*Queens-Shelburne*), Thorvaldson, Vaillancourt and Walker. (23)

In attendance:

E. R. Hopkins, Law Clerk, Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

On Motion of the Honourable Senator Thorvaldson it was *Resolved* to report as follows: Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill S-22.

Bill S-22, "An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code", was read and considered.

The following witnesses were heard:

Department of National Health and Welfare: Dr. J. N. Crawford, Deputy Minister; R. E. Curran, General Counsel.

Others: Mr. Alan B. Archer, Trustee, Toronto Board of Education; J. Chevalier, Secretary, Canadian Manufacturers of Chemical Specialties Association.

Consideration of the said Bill was deferred to the next meeting of the Committee.

At 1:10 p.m. the Committee adjourned until 2:00 p.m. this day.

Attest:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 22, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, an Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code, met this day at 12.45 p.m. to give consideration to the bills.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators we have before us a bill to be known as the Hazardous Substances Act. The departmental representatives are here. Could I have the usual motion for printing?

The committee agreed that a verbatim report be made at the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: Dr. Crawford, will you tell us about this bill?

Dr. J. N. Crawford, Deputy Minister, Department of National Health and Welfare: Mr. Chairman and honourable senators, Bill S-22 is popularly known as an omnibus bill, as it does several things. The first is to formulate a bill controlling hazardous substances. The need for such authority in the hands of the department has been evident for some time. Hazardous substances, which are fluids, hazardous substances which are drugs, are now readily controlled under the Food and Drugs Act in the main; but when we are faced as we are from time to time with the sudden and unexpected appearance on the market of substances which are neither foods nor drugs but which nevertheless pose a haz-

ard to health, we find ourselves helpless to deal with such substances.

I think that you are already aware of some examples of the sort of substance that has in the past come into this category. For example, some time ago there were some very attractive necklaces introduced into this country from the Caribbean area. They were very attractive, but unfortunately they were made from the seed of a plant, and this seed was highly poisonous so that when eaten by children the children suffered. This was definitely a hazard to health, but the substance itself was neither a food nor a drug. We had considerable difficulty getting this off the market in time to prevent further tragedies.

Just last Christmas you will recall there was an incident where little plastic containers holding water were introduced into this country from two sources, the United States and Hong Kong. The purpose of these was to place them in the refrigerator and freeze them and then put them into drinks so that they would act as coolants for the drinks. The ones from the United States contained perfectly good water; there was no hazard there. But, unfortunately, the ones from Hong Kong contained water which was contaminated with pathogenic organisms and if as could easily happen the plastic container cracked, then the drink in which the ice was placed equally became contaminated and was a hazard to health. We had great trouble getting these products off the market, although they were potentially a hazard to health.

There are many similar examples of substances, neither foods nor drugs, which are hazardous to health, and we are seeking authority to deal with them in two ways. In the first place, we want to be able to quickly and without delay get truly hazardous substances off the market. We propose a schedule in two parts. The first part of the schedule will

allow us to remove these substances from the market. There are a number of other substances extremely useful when used for the purpose which they are designed, and it would be ridiculous to expect to take these off the market, but we do want to have the authority to control the method and circumstances of sale. We want to be able to insist upon adequate warnings being placed upon these substances and appropriate labelling. So that in the second part of the schedule we are seeking authority to control methods of sale of another group of hazardous substances.

At the moment we have listed a number in each part of this schedule to serve as examples of the sort of thing we are talking about, but this schedule is going to be subject to change from time to time. We cannot tell you at the moment just what we might want to put on this form. We in the department realize that we are probably going to suffer more than anybody else from this sort of legislation, because no doubt we will be subject to all kinds of pressures from sincere people who have strong views about certain substances they think either should be removed from the market or should be controlled with respect to their sale, and we may not agree that they should be so dealt with. We will just have to brace ourselves, I suppose, to withstand this sort of pressure, but it is an occupational hazard which we will have to put up with.

The Chairman: Although the bill does not go so far as to cover occupational hazards.

Dr. Crawford: No. This is peculiar to us, Mr. Chairman. I merely want to add that since the bill had its first reading on October 31, we could, of course, properly discuss it with our advisers in the provinces, the members of the Dominion Council of Health who met as recently as November 16 and 17. I do want to report to you that those members, consisting of the deputy ministers of health of all provinces, were unanimous in their opinion that such legislation was in fact desirable and required.

I think that is all I have to say by the way of introduction, Mr. Chairman.

The Chairman: Is this sniffing of glue covered somewhere here?

Dr. Crawford: It will be in Part II, sir, one of the control methods of distribution. I think

you will see that in Part II, item No. 4. It is one of the control items. But we do not propose to take it off the market, because it is a very useful substance for sticking things together.

The Chairman: Short of taking it off the market, how do you propose to control it?

Dr. Crawford: We will insist on labelling, sir, that indicates that if it is used in a closed space it is highly dangerous to health.

The Chairman: Are there any other questions?

Senator Baird: Will this affect any of the well-known brands that are on the market?

Dr. Crawford: One example that I think you may have in mind is in Part II, No. 3. We are talking here about household polishes. There is a product on the market now which is an extremely good furniture polish. As furniture polish it is excellent, but as a beverage for small children it is highly poisonous. Of course, it is not meant to be used in this way so that we want to be in a position to insist upon adequate warnings and adequate information being supplied to the users as to the dangers of this substance.

Senator Leonard: Are the glues defined here the glues that are used for glue sniffing?

Dr. Crawford: Yes, sir. This is what we are aiming at.

Senator Leonard: Perhaps the chairman knows this, but tell me where the federal Government gets its jurisdiction, constitutionally, to legislate as to the flashpoint of paints and to glues containing a certain amount of such and such a substance? What does this come under? I suppose you have been advised by the Department of Justice or by your own departmental solicitors that it is constitutional.

The Chairman: The department itself has an excellent counsel, Mr. R. E. Curran. Perhaps, Mr. Curran could come forward.

R. E. Curran, General Counsel, Department of National Health and Welfare: Mr. Chairman, this bill will find its basis in the criminal law. It has been recognized that the protection of the public health, or offences which are likely to be injurious to public

health, are not crimes against the public law but are criminal law offences. The basis for this legislation would therefore find its way in under the criminal law as exercised by the Parliament under its right to protect the public.

The Chairman: Is that a satisfactory answer, senator?

Senator Leonard: I was not arguing against it. I just wanted to be sure that it was covered.

Senator Thorvaldson: I take it, Mr. Curran, that that is the basis of the whole Food and Drug Act itself, is it?

Mr. Curran: It is exactly the same basis, yes.

The Chairman: I should point out that Senator Carter is here, and since he dealt with this bill in the first place, I would ask him if there is anything he would like to add.

Senator Carter: No thank you, Mr. Chairman. I think the time is passing rather quickly and you have the departmental officials to give you what information you need.

The Chairman: Mr. Alan B. Archer, Trustee, Board of Education, Toronto, is here now to present his brief.

(Text of brief follows)

Mr. Chairman and Honourable Senators:

This brief is presented for your consideration by Alan B. Archer, a concerned parent, a school trustee for the City of Toronto, and the Chairman of the Committee for Building and Sites for the Metropolitan Toronto School Board, a member of the liaison committee to study the effects of hallucinogenic drugs upon school students, and an executive member of META. While service in these positions has been a factor in my thinking on this topic, I am presenting this brief as a private citizen and not as a representative of the various boards of which I am a member.

In reference to Bill S22, there is an increasing use in the entire Metropolitan Toronto area of airplane glue with the substance toluene, which is a depressant to the central nervous system that causes a light-headed, stupefying condition to the user when the heavy fumes are inhaled, and results in permanent brain and liver damage. I have seen in my own area of the city this

substance sold in stores and have actually sent a 12-year old boy into a store to purchase what he called a "sniff kit", a tube of airplane glue and two bags. I have seen children under the influence of toluene (aromatic hydrocarbon C_7H_8). These children appear to be in a stupor and answer questions very slowly and with difficulty, and have a deathly white pallor to their skin. I have seen these children sent home from school because they were in a toxic stupor. One principal in my immediate area has said that he is aware that about 1% of his students have acquired the habit and stated there could be more students sniffing glue than he was aware of.

The toxic fumes are produced by the volatile solvents added to glue to make it dry faster. These substances include acetone, benzene, butyl acetate, carbon tetrachloride, chloroform, ethylene dichloride, ethyl and isopropyl alcohols, hexane, toluene, and various ketones and esters. Plastic cement, another widely used product that contains volatile solvents, will be considered here, along with glue, as a medium for sniffing.

The fumes from glue and plastic cement react on the nervous system rather like alcohol. At first the glue sniffer (known as a "flasher" or "pressor") feels a mild intoxication that brings on exhilaration, euphoria, and excitement. Soon afterward physical reactions begin, such as loss of coordination, difficulty in speech, double vision, and buzzing in the ears. In about an hour the glue sniffer enters a state of drowsiness, stupor, or unconsciousness, during which the most detrimental effects of glue sniffing occur. When in this condition many persons do not feel responsible for their acts. Thus they become dangerous to their families, friends, society, and themselves.

The habitual inhaler of glue fumes may show other pathological effects. Jacob Sokol, M.D., chief physician of the Los Angeles Juvenile Hall, reports that sniffers develop temporary damage to kidneys, liver, and blood; suffer congestion of the mucous linings in the nose, throat, and lungs; and show signs of anemia, quickened heartbeat, and shortened breath. When asked by the California State Assembly's public health committee whether he considered glue a poison, Dr. Sokol answered, "Yes, it's toxic to the liver and kidneys." Other investigators have

reported that the toxic effects of glue sniffing can cause paralysis and bone-marrow depression.

Honourable Senators, the students I refer to are in the 8-14 year-old age group. These children are in many instances the products of environmental conditions. I would be derelict in my duty as an elected representative if I did not point out, Honourable Senators, that this body should set up a Committee to deal not only with the irreparable damage that has already been done to these young minds by sniffing toluene, but to tackle the real problem, the root cause or reason why a youngster would so desire to escape reality in this manner. I am firmly of the opinion that only the Senate of this country can actually bring to the attention of the Canadian people the proper steps to be taken in this matter. I feel that you must set up immediate controls and spell them out in your legislation. The State of New Jersey had made glue-sniffing an act of disorderly conduct, punishable by up to a year in jail or a \$1,000.00 fine. Houston, Texas passed an ordinance four months ago prohibiting the sale, giving or delivery of glue and cements containing any of 12 solvents to persons under 21 years of age. I am firmly of the opinion that in the area of 10% of Metropolitan Toronto school students require some degree of adjustment. Parents must concern themselves with the underlying factors that bring about glue sniffing in children. They must be urged to seek professional help because I am strongly of the opinion that sniffing airplane glue is just a first step in a maladjusted child towards more sophisticated drugs and the subsequent suicides, jail, etc.

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The Chairman: Mr. Archer, you know of course we are going to pass this bill.

Mr. Archer: I certainly hope so. With that in mind I will be quite happy to leave it in your hands.

Mr. J. Chevalier, Secretary, Canadian Manufacturers of Chemical Specialties Association: Mr. Chairman and hon. senators, I am here representing the Canadian Manufacturers of Chemical Specialties Association. I am the secretary. We feel we have something to contribute to the consideration of this bill, and I would request the opportunity of being heard, possibly at a later date. Would next week be convenient?

The Chairman: We will be sitting next Wednesday, but we will have to deal with this by that time.

Mr. Chevalier: We will have our presentation ready and we will be prepared for examination at that time.

The Chairman: That will be all right, but would you like to prepare a short statement of the points you intend to make and forward them to Dr. Crawford so that they may be considered in the meantime?

Mr. Chevalier: Yes, we will do that.

Senator Thorvaldson: May I ask Dr. Crawford one more question? Dr. Crawford, as a matter of interest, just how did you get rid of those Hong Kong ice balls and the necklaces from the Caribbean?

Dr. Crawford: Well, we had to deal with the provincial departments on this, Senator Thorvaldson. We telephoned and telegraphed and told them of the hazard which was in their shops and they dealt with it provincially.

Senator Thorvaldson: I see.

Dr. Crawford: This is how we had to handle that situation. Of course, it was a pretty time-consuming process.

The Committee adjourned its consideration of the Bill.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 14

First Proceedings on Bill S-24,
intituled:
"An Act to amend the Canada Deposit Insurance Corporation".

WEDNESDAY, NOVEMBER 22nd, 1967

LIBRARY WITNESS:
Department of Insurance: R. ★ Humphrys, Superintendent.
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ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47).

Ex officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 8th, 1967:

"The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Grosart resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Macdonald, P.C., for second reading of the Bill S-24, intituled: "An Act to amend the Canada Deposit Insurance Corporation Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 22nd, 1967.

(15)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2:00 p.m.

Present: The Honourable Senators Hayden (*Chairman*), Baird, Beaubien (*Bedford*), Croll, Dessureault, Everett, Gelinas, Gouin, Isnor, Leonard, MacKenzie, Molson, Smith (*Queens-Shelburne*), Thorvaldson and Vien.—(15)

In attendance:

E. R. Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

On Motion of the Honourable Senator Molson it was *Resolved* to report as follows: Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill S-24.

Bill S-24, "An Act to amend the Canada Deposit Insurance Corporation Act", was read and considered.

The following witness was heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

With a view to possible amendment, consideration of the said Bill was adjourned until the next meeting.

At 2:40 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 22, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-24, to amend the Canada Deposit Insurance Corporation Act, met this day at 2.00 p.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: We have before us for consideration Bill S-24, to amend the Canada Deposit Insurance Corporation Act.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

This is a bill amending the Canada Deposit Insurance Corporation Act, and that should be fairly fresh in your minds as we dealt with it earlier this year.

We have with us today Mr. Humphrys, Superintendent of Insurance, who is the co-ordinator, I believe, in respect of this legislation. Mr. Humphrys, would you come forward and tell us about it?

Mr. R. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, this bill was explained on second reading in the Senate. I do not think there will be much advantage served by my repeating it in detail.

I would just say that the principal purpose for coming back to Parliament for an amendment to this act so soon after it was passed is to enable arrangements to be made to co-ordinate the plan of deposit insurance established under this legislation with a similar plan that has been adopted in Quebec under Quebec legislation. The Quebec legislation

guarantees all deposits in the province regardless of what institution holds the deposits. This would mean that the Quebec plan would apply to federal institutions that are doing business in Quebec and also to institutions from other provinces that are doing business in Quebec. This federal plan of deposit insurance applies to all federal institutions, and now by the issuance of policies in agreement with the provinces it also applies to all the trust and loan companies incorporated in provinces other than Quebec. Some of those companies are doing business in Quebec, so, in the absence of some arrangement between the Canada Deposit Insurance Corporation and the Quebec Deposit Insurance Board, there would be duplication of coverage and perhaps duplication of charges in respect of deposits in Quebec.

Discussions have taken place between the officials representing the federal Government and the officials representing the Quebec Government, reaching an exchange of letters between the Minister of Finance and the Premier of Quebec laying out a tentative basis of agreement between the Canada Deposit Insurance Corporation and the Quebec Deposit Insurance Board that would eliminate duplication of coverage. However, to implement that agreement the powers of the Canada Deposit Insurance Corporation have to be changed.

The basis of the tentative understanding is that with regard to a provincially-incorporated institution that is doing business both in Quebec and outside Quebec, the deposits in Quebec would be guaranteed by the Quebec Deposit Insurance Board under their legislation, and the deposits outside Quebec would be covered by the Canada Deposit Insurance Corporation, so we had to seek the power to insure some of the deposits of member institutions, but not necessarily all. As the legislation is now, we can only insure all deposits within the definition.

The second purpose, again stemming from that, is that we are seeking the power to enter into an agreement with the Quebec Deposit Insurance Board for the administration of the plan adopted under this act and their plan in order to eliminate duplication of inspections, duplication of the filing of records, and really to cut the administrative costs to the member institutions.

Power is also sought in this bill to enable the Canada Deposit Insurance Corporation to make short term loans to any provincial agency that is doing deposit insurance. It is intended initially to enable the Canada Deposit Insurance Corporation to make short term loans to the Quebec Deposit Insurance Board, to enable that board to meet temporary liquidity needs.

Among the purposes intended to be met by this bill, the principal one is to enable the Quebec plan to operate at a lower level of reserves and income than otherwise might be felt necessary. In the exchange of letters to which I have referred the Minister of Finance took the position that such an agreement for short term financial support should be contingent upon an agreement by Quebec not to levy charges on federal institutions doing business in Quebec that would duplicate the premiums being paid by those institutions to the Canada Deposit Insurance Corporation.

Those are the important purposes of the bill. The other amendment which occupies a fair amount of space is a technical one to clarify the period for which the premium runs. This amendment will not change the existing situation, or the interpretation that we had in mind to start with, but it will make it clear that the premium year runs from May 1 to April 30. This change is desirable to remove some doubts that had arisen in that respect, particularly for 1967, since the plan started only in April.

Secondly, this amendment will make it possible to have a formula for refunding premiums by reason of agreements that may be made with Quebec whereby the insurance on deposits in Quebec that the Canada Deposit Insurance Corporation now issues would be transferred from the federal plan to the provincial plan. In such cases we would want to make a refund of premium for the portion of the year that remained.

Mr. Chairman, those are the only preliminary comments that I have.

The Chairman: Yes. I should point out that there was at least one major question that developed on the second reading of this bill, and that had to do with the definition of "deposit". In the original act there is no definition of "deposit", and that is really a basic element in the whole legislation. The reason given was that the legislation was too new, and it was not known how encompassing it should be, and, therefore, flexibility was wanted.

In the original act that was passed there was a provision in the definition section which simply provided that "deposit" means a deposit as defined by the by-laws of the corporation, and from there one had to go to section 12 where the powers of the directors to pass by-laws are set out, and among those powers is one to pass a by-law, with the approval of the Governor in Council, "defining the expression 'deposit' for the purposes of this Act". The Senate and the House of Commons both agreed that in the circumstances, this being new legislation, that that was a good way in which to leave it. Subsequently, the word "deposit" was defined by by-law, and approved by the Governor in Council.

We now have an amending bill before us and the suggestion made on second reading, with which I certainly concur, was that if "deposit" can now be defined for the purposes of administration in a by-law it can be defined in the act.

I have a further suggestion on that point, depending upon what Mr. Humphrys says as to whether they are prepared to put a definition in the act at this time.

Senator Vien: Is the Canada Deposit Insurance Corporation Act administered by the Insurance Department, or by the Finance Department?

Mr. Humphrys: No, Mr. Chairman. Under the statute the directors of the Corporation are the deputy minister of finance, the Governor of the Bank of Canada, the Inspector General of Banks, the Superintendent of Insurance and a fifth director to be appointed by the Governor in Council.

Senator Vien: The Minister of Finance is responsible for the acts of the department. That is what I want to find out.

Mr. Humphrys: Yes. The corporation acts as a separate Crown corporation. It is

empowered to use the services and facilities of the Department of Finance and the Department of Insurance. The corporation is still quite new. It has a secretary but no other staff at the present time. It is empowered to hire staff and, depending on how it develops in future, it may reach the point where it has quite a large staff of its own, or it may continue to operate with a minimum of staff of its own, making use of staff in the Department of Finance or the Department of Insurance.

Senator Vien: Is this amending bill made at the request of the department?

Senator Leonard: Has a fifth director been named?

Mr. Humphrys: Yes. Mr. Antonio Rainville is Chairman of the board of directors of the corporation.

The Chairman: Now do you think you can answer my question?

Mr. Humphrys: Yes, Mr. Chairman.

Senator Leonard: First of all, would you tell us what the definition now is?

Mr. Humphrys: The definition is in the by-laws of the corporation. It runs a page and a half.

Senator Leonard: You do not need to read it all. Just summarize it.

Mr. Humphrys: When you start paraphrasing you almost start reading it. It is an obligation of an insured institution to pay back any funds held for a person or corporation where the liability is in terms of a demand liability or is a term liability if the depositor has the right to demand his money back within five years. It is a demand deposit or a deposit that can be demanded within five years. If it runs more than five years it is not an insured deposit.

Senator Vien: That is provided for in the statute?

Mr. Humphrys: It is provided for in the definition, in the bylaws of the corporation which have been approved by the Governor in Council.

The Chairman: It is not in the act.

Mr. Humphrys: It is not in the act. When the bill was going through earlier this year we were not in a position to set down a

definition of "deposit" at the time. In arriving at the definition which now appears in the bylaws a good deal of work and study went into it. In principle I think that none of the directors of the corporation would take issue with the idea that an item of this importance should be in the statute rather than in the bill or in regulations.

I would say, however, that we feel we have scarcely caught our breath in getting this corporation into existence. We have not completed our first inspection of the member institutions to even audit the premium return. We still have to work out an agreement with Quebec if this power is given to us under the bill. It is of very great importance that the definition of "deposit" be the same for their plan as for ours.

We have encountered some problems that are now before us which may require a change in the definition in order to accommodate the particular problems that have come up. When the bill was going through the Commons the Minister of Finance gave an undertaking that he would refer the bylaws, particularly the bylaw defining "deposit", to the Committee on Finance, Trade and Economic Affairs for study.

The by-law has been referred to that committee but it has not yet been examined there. I can say, from speaking for the corporation, that we would prefer to have some more time to allow this thing to settle and see if we can feel confident that we have encountered all the variety of problems, before writing the definition into the statute.

The Chairman: I had a purpose in asking Mr. Humphrys that question. Many times—and you will recall this, too—we had bills before you, I could name some of the more recent ones, where we have been persuaded, or permitted ourselves to be persuaded, to wait for a time in connection with some amendments we were discussing, "because the Act would be coming back to us and there would be an opportunity then". The last one of those, I will not name it, we have been waiting three years for the act to come back and it has not come.

I was looking for a different approach. I thought that, if we put a time limit on the time within which they must come back to Parliament with definition, or that is the termination date of the bill, that would make them move within the length of time. It then

becomes a matter of how much time, I would suggest maybe within a year from the date on which this bill receives assent.

Senator Croll: Mr. Chairman, this bill is hardly one that we can use in that way. I agree with what you say. However, he is making a deal with a province which has some decided views on this and he may find himself tied into some negotiations and it may take an extraordinary amount of time and it must be done or there will be double taxation. Perhaps, with the question that you asked and the words on the record we ought to leave it alone in order to give them an opportunity; because it would be quite unfair for them to work under the gun. That is my problem.

The Chairman: Do you know, Senator Croll that, in variations, this is exactly the answer that I have received, so many times, on the basis that it will come back to us soon.

I am not suggesting that we do not give the department what it wants now and let them keep their definition in the order in council; but I want some string, so that at some time, whether it is a year or eighteen months, within which they must come back with their definition or they no longer can operate. All they have to do is come back with their amending bill and they keep their authority but surely that is not an unreasonable position.

Senator Vien: Why do you ask so much time to come to a proper definition?

The Chairman: Actually, I do not think it should. There are those factors. One is the corporation is already collecting premiums on whatever definition they have of "deposit", so the money is coming in and Quebec will be doing the same thing. When the money is coming in, sometimes there is not the same urgency about tidying up. If you have to wait until you have tidied up, for the money to come, then you get started on it more promptly.

Senator Croll: How much time does Mr. Humphrys think he needs, what is his limit in time?

The Chairman: A year?

Senator Croll: No. Go ahead.

Mr. Humphrys: I should think that after we have inspected and audited every institu-

tion, and reached agreement with Quebec or any other province that had a plan of deposit insurance, we should have things fairly well settled so far as the definition of "deposit" is concerned.

When I say that we feel that we would still like to have some flexibility, I do not mean to imply that we regard the definition of "deposit" as something than can be changed from day to day.

The Chairman: I would not think so.

Mr. Humphrys: It is extremely important that it be firm, because we do not want any depositor putting money in an institution with the idea that he is insured and then having the deposit definition changed and he finds himself not insured. Actually, this definition is one that, once you start on it, you can move only one way so we feel it quite important that we have a chance to survey all the situation before we change it, and we would like a little bit of room, in case some new situations come up, at least in the first year or two of our life.

I am a little bit uneasy about the concept of putting a statutory termination on us, because we have to enter into agreements with Quebec and we have to issue contracts to public institutions that are continuing contracts and they can only be terminated by us at least by following a specific procedure. So I am uneasy about our position if our definition of "deposit" is terminated by a certain date because we cannot control when we can get on the legislative calendar of Parliament.

The Chairman: If you set within a year or if Parliament had not been sitting, within sixty days after Parliament sits they must come back.

Senator Vien: The question was whether you feel a year or two years are necessary to come to that point of making a definite definition.

Mr. Humphrys: I would think another year.

Senator Vien: A year?

Mr. Humphrys: Yes.

Senator Vien: Or if Parliament is not sitting...

The Chairman: I think you should add that if Parliament is not sitting at the time, then within sixty days.

Mr. Humphrys: If you feel it is necessary Mr. Chairman, to proceed in that way, could you not at least tie it down to a particular session rather than to a particular date? The circumstance might arise where you could not get the legislation through by a particular date, but if the bill were introduced at a particular session you would know at least that it was before you at that session.

The Chairman: That is reasonable.

Senator Leonard: I would have thought that this might be covered in the interchange of letters between the Minister of Finance and the Province of Quebec. In any event should these not have been tabled?

The Chairman: They were tabled some months ago.

Senator Leonard: I thought the agreement as reflected in the letters would cover this definition of "deposit insurance".

The Chairman: It may when they finalize the agreement, but it has not yet been finalized. However, I would think that we could cover the situation that within a period of time an amending bill dealing with the definition of deposit, among other things, might be necessary. That would deal with the problem you are concerned about. But we would have to get the draft prepared and that will take a little time.

Senator Isnor: Are there any other provinces involved besides Quebec?

Mr. Humphreys: At the present time that is the only one. Ontario has legislation on the statute books which would adopt a plan of deposit insurance and did have it in effect as of last April. But as soon as the federal plan came into effect Ontario amended its act and had their institutions apply for insurance under the federal plan. The legislation is still on the statute books but they are not granting insurance.

The Chairman: There is one other point. The amendment I am going to suggest gives the corporations more authority than they would have in the situation you have here. If you look at page 4 of the bill where they deal with these agreements you will see that at subsection 3 under the heading "Regulations" it says:

For the purpose of enabling the Corporation to carry out an insuring arrangement referred to in subsection (1) or provided for in an agreement under subsection (2), the Governor in Council may, by regulation, adapt any of the provisions of this Act to any provincial institution referred to in subsection (1), or to any of the deposits with that institution, and make provision for any other matter or thing resulting from such insuring arrangement or agreement that is not provided for by this Act.

In other words, you are giving legislative authority to the Governor in Council. I think there is an apt way of doing it which removes part of this difficulty and I had our Law Clerk, Mr. Hopkins, draft something to achieve this. It simply says:

For the purpose of enabling the Corporation to carry out an insuring arrangement referred to in subsection (1) or provided for in an agreement under subsection (2), the Governor in Council may, by regulation, make provision for any matter or thing resulting from such insuring arrangement or agreement.

This is pretty much in line with the provision that they have in the Quebec act, and it gives all the necessary authority and removes that criticism that we should not give power to legislate by regulation.

Now, we are going to have to adjourn consideration of this bill so as to permit the drafting of this other amendment. If the committee wants to deal with this now or at that time—

Senator Croll: I can see no objection because I haven't got the purpose of it all. But should you not have that amendment considered by the people who drafted this bill?

The Chairman: Yes.

Senator Croll: They may have had something in mind here. They are using a great number of words to say something and it may affect another bill.

The Chairman: The only words that create a problem are found in the last clause, and they are not provided for by this act.

Senator Leonard: Perhaps if you took those words out.

The Chairman: That is about what I have done.

Senator Leonard: It still leaves it within the framework of the act.

Mr. Humphrys: The wording in this section was carefully shaped with two ideas in mind. An attempt was made to make it clear that the Governor in Council could not by way of regulation alter the provisions of the act. The word "adapt" was used for the purpose of enabling the corporation to carry out an insuring agreement and the word "adapt" was used to convey the idea that it was not a power to affect the substantive content of any provision of the act, but to shape it if necessary to fit the insuring arrangement and in that respect it was copied from a precedent in the Canada Pension Plan Act which contains a similar wording that enables the Governor in Council to pass regulations that will adapt the provisions of the act, as may be necessary, for the purpose of an agreement with other jurisdictions. The final words here were intended to make it clear that the Governor in Council could pass regulations dealing with matters other than those specified in the act, so that it removes the power from him to change provisions in the act. But the effect is that it gives the power to the Governor in Council to lay down rules within which the corporation must act, and if you strike out those words the result will either be that the corporation will have to make its own rules or else that the corporation won't be able to carry out some of the insuring arrangements. So we put the words in for that purpose.

Senator Leonard: The corporation will have to make its own rules within the framework of this act, and if it is going to do anything else then it should come back to the legislature.

The Chairman: That is right. I can refer the Superintendent to an article which a former Deputy Minister of Justice wrote entitled: "The Composition of Legislation". In it he says very clearly what they should or should not do. He says:

Authority is sometimes conferred to make regulations for removing doubts or for supplying any deficiency in the statute. Unless he is bidden to put them in, a draftsman should resist provisions of this character, because the authority intended to be conferred is extensive and the

limits are obscure. If doubts arise on the interpretation of the statute, let the courts or Parliament resolve them; and if there is any deficiency or omission in the statute, let Parliament supply it!

Senator Croll: That is very good if he would only follow the practice.

Senator Leonard: Surely, this is a case to which those words do not belong.

Senator Croll: I shall not argue that.

Senator Vien: This is not without precedent. There are other precedents, but I think we have protested more than once against the power to make regulations outside the framework of any legislation. To make an act more workable, and if they are within the scope of the legislation, the Governor in Council should be empowered to make regulations. But, that is just for the purpose of making the act more workable, and not for the purpose of going outside its framework.

The Chairman: That is right. Is it the wish of the committee that we adjourn consideration of the bill so that our Law Clerk and the departmental officials may get together to settle the wording?

Senator Vien: Yes, I so move.

The Chairman: Do you have anything further to add to what I have said at great length already, Senator Grosart?

Senator Grosart: Mr. Chairman, I would raise one point. I am aware of the fact that this committee does not have the authority to examine the by-laws of the corporation—I am speaking now of the definition section—but in view of the fact that we have in a way waived the suggestion that the definition of the word "deposit" in the by-laws be incorporated in the act at this time, and also in view of the fact that the definition in the by-law has now, and will remain with, the full force of the statute, I wonder if I could draw the attention of the Superintendent to a part of Section 2 of the by-laws. I raised this in the Senate, and I am still concerned about it. By-law 2(c) reads:

"date of deposit" means with respect to any moneys constituting a deposit within the meaning of paragraph (a), the day credit for such moneys is given to the account of the depositor or the date an instrument is issued for such moneys by the member institution.

There is a qualification of this phrase in Section 2(a)(i) which reads "has given, or is obligated to give," while in Section 2(a)(ii) the phrase is "has issued, or is obligated to issue".

I should like to draw Mr. Humphrys' attention to my concern—and it may be only a personal concern—that in Section 2(c) as it is now drafted the rights of the depositor may not be fully protected. There may be an explanation for this, but as I read it now, if a deposit-taking institution failed for any reason to give credit to the account of the depositor then the practical date of the deposit would not be the effective date.

The Chairman: You must remember this, that there is an obligation on the parties—the banks—which must take out this insurance to correctly state who are the depositors. That is correct, is it not, Mr. Humphrys?

Mr. Humphrys: Yes.

The Chairman: If they put the wrong date in, or do not include somebody because of some mistake in their records, they are in violation of the statute. I do not think they have any remedy in case of the failure of a bank, and if any question came up about the liability of the insurance to cover such a

situation. My own feeling is that the day credit for such money is given would be read.

Senator Grosart: Would be?

The Chairman: Would be read, meaning that the day I ranked as a depositor and was entitled to have that noted in the records of the bank. They may take a week to write up their records, as you know. If we are going to tidy up the definition, then, I suggest that we tidy it up in every regard.

Senator Grosart: I am not going that far, Mr. Chairman. The point I am raising is that this phrase, "or is obligated to give," is used twice in the same section, in the definition of "deposit," but is omitted when we come to the definition of "deposit date". Now, I am not a lawyer, but I would suggest that the question might arise why it was omitted here. Is it significant that it was omitted in this place while it is clearly spelled out in the other two places?

That is the only question that I raised. I realize we are not going to amend the by-laws. It is not our job here to do that, but I merely call it to Mr. Humphry's attention. Perhaps, if my point is valid, the corporation itself might decide to amend its own by-laws.

The committee adjourned.



Second Session—Twenty-seventh Parliament
1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 15

Second Proceedings on Bill S-22,
intituled:

"An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code".

WEDNESDAY, DECEMBER 6th, 1967

WITNESSES:

Department of National Health and Welfare: Dr. J. N. Crawford, Deputy Minister; *Canadian Manufacturers of Chemical Specialties Association:* A. L. Copeland, President; *Canadian Paint Manufacturers Association:* Eric Barry, Executive Vice-President; M. R. Feeley, Laboratory Services Manager, Paint Research Laboratory, Canadian Industries Limited; J. M. Coyne, Q.C., Parliamentary Counsel.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47).

Ex officio members: Flynn and Connolly (*Ottawa West*).

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, November 6th, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Basha, for the second reading of Bill S-22, intituled: "An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator McGrand, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 6, 1967.

(16)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9:30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Benidickson, Burchill, Croll, Everett, Fergusson, Gouin, Haig, Irvine, Lang, Leonard, MacKenzie, McCutcheon, McDonald, Molson, Pearson, Pouliot, Rattenbury, Smith (*Queens-Shelburne*) and Thorvaldson. (22)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel and Chief Clerk of Committees.

Consideration of Bill S-22, "Hazardous Substances Act", was resumed.

The following witnesses were heard:

Department of National Health and Welfare: Dr. J. N. Crawford, Deputy Minister.

Canadian Manufacturers of Chemical Specialties Association: A. L. Copeland, President.

Canadian Paint Manufacturers Association: Eric Barry, Executive Vice-President; M. R. Feeley, Laboratory Services Manager, Paint Research Laboratory, Canadian Industries Limited; J. M. Coyne, Q.C., Parliamentary Counsel.

Further consideration of the said Bill was deferred until the next meeting.

At 10.50 a.m. the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 6, 1967

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to amend Bill S-22, to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code, met this day at 9.30 a.m. to give further consideration to the bill.

Salter A. Hayden (Chairman) in the Chair.

The Chairman: This is a bill which we started to consider on November 22. There were several witnesses who wished to be heard. Last time we heard the departmental officers. These other people are here today, and I would suggest that now is the time when they should come forward. Mr. Copeland is here. He is President of the Canadian Manufacturers of Chemical Specialties Association.

A. L. Copeland, President, Canadian Manufacturers of Chemical Specialties Association: Mr. Chairman and honourable senators, if I may I should like to proceed by reading this brief. It is short.

The Canadian Manufacturers of Chemical Specialties Association was formed in 1958 and today represents a substantial proportion of the manufacturers of household chemical specialty products in Canada.

Specific objectives of the association are: the advancement of the industry through the creation of a climate in which it can best operate; the advancement of the productive output of member companies; the advancement of management, technical, administrative and marketing skills of member company personnel; the promotion of ethical practices on the part of member companies; and, above all, the promotion of the safety and the welfare of the public and the efficient use by the public of the industry's products.

The association is composed of five basic product divisions. These are: aerosols, soaps, detergents and sanitary chemicals, waxes and floor finishes, insecticides and pesticides, automotive chemicals.

A list of officers and directors and a roster of members of the association are appended to this submission.

The association, in its capacity as a recognized spokesman for the chemical specialty manufacturing industry, maintains a close co-operative relationship with the Canadian government, notably through the Food and Drug Directorate of the Department of National Health and Welfare and the Department of Agriculture. At such time as the Department of Consumer and Corporate Affairs becomes a ministry of the Canadian Government, a liaison with this Department will be set up as well.

The association has been in effective liaison with the Consumers Association of Canada for several years, and activity which is mainly concerned with the education of Canadian consumers in the safe and efficient use of the industry's products.

Labelling of Hazardous Household Products: The association has long been convinced that hazardous household products must be labelled in a manner to ensure that consumers may use these products for their intended purpose without danger to their health or wellbeing. In addition, such labelling should provide for the safe storage and disposal of these products where necessary and should indicate action to be taken in the case of misuse, particularly that of accidental ingestion by children.

The result has been the development and wide dissemination since 1966 of a comprehensive labelling code which outlines proper labelling practices to be followed for hazardous household chemical products. The labelling code received the unanimous endorsement

ment of member companies of the association and their agreement, on a voluntary basis, to comply with the requirements of the code. Copy of the labelling code is appended to this submission.

It is worthy of note that during the process of development of the labelling code, the association worked in close harmony with the Food and Drug Directorate and with the Consumers Association of Canada and their assistance and counsel, in this connection, are respected and are much appreciated.

The labelling code defined dangerous and hazardous chemical products according to degrees of toxicity, flammability and corrosiveness.

In the considered opinion of the association, it is important to limit the use of such precautionary labelling to those products only, which present a practical hazard to the consuming public. To extend such labelling practices to products which present no practical hazard confuses the issue and defeats the purpose of the cautionary label statements and can only lead the public towards apathy in respect to label statements on truly hazardous products.

Legislation as proposed in Bill S-22: The association is completely in accord with the intent of Bill S-22 and fully appreciates the need for authority for the government to remove from sale dangerous items of the type outlined in Part I of the Schedule on Page 8 of the Bill.

The association, though preferring a voluntary industry approach to the elimination of deficiencies which the bill is designed to offset, appreciates that it has been unable to obtain the voluntary adherence to the labelling code of all household products manufacturers in Canada who are not members of the association.

The association, therefore, appreciates the need for legislation which will enable the establishment of regulations covering the proper labelling of hazardous household products; and also the authority to remove from sale those hazardous products which are improperly labelled according to regulations, providing that there be a right of appeal.

Notwithstanding the foregoing, the association feels that it has a responsibility to point out that legislation alone will not solve the problems of consumer carelessness or ignorance leading to the misuse and accidental ingestion of these products. A program of consumer education emphasizing the impor-

tance of reading the information on labels and storing products out of the reach of children is also urgently required.

The association notes again that it has been cooperating, and will continue to cooperate, with the Food and Drug Directorate, the Consumers Association of Canada and the Industrial Accident Prevention Association in such educational programs, and will follow suit with other representative groups as the need arises.

An examination of bill S-22: The association respectfully submits that certain of the provisions of the Bill require clarification and modification. These are treated in order as follows:

Section 2(a) Interpretation (Page 1): The interpretation "advertise" implies that disposition of any kind would be prohibited. The association recommends that such disposition be specifically worded to imply disposition to the general public so as not to be confused with disposition as garbage or waste.

Section 4, Inspectors (Page 2): The association notes that there is no provision in the Bill for the qualification of Inspectors and suggests that this is an important matter which should not be overlooked. Inspectors designated by the Minister should be "duly qualified" for their responsibility, and the association submits that these words "duly qualified" be included in the Act.

Section 5, Search, Seizure and Forfeiture (Page 2): The association submits that there should be clarification of the powers of inspectors. These should be clearly delineated in the regulations and should not be too broad. Search, seizure and forfeiture are serious, discretionary matters and could cause significant damage to reputation, particularly if unwarranted or improperly handled.

Schedule, Part II (Page 8): (a) Based on the condition that those household products noted will be prohibited from sale unless otherwise authorized by regulation, the association is concerned with the inclusion of non-hazardous products. The association submits that the product examples listed in Part II of the Schedule be deleted and that reference therein be limited to hazardous products based on those described in the association's labelling code. This, the association feels, would be fully compatible with the intent of the bill.

(b) The association is naturally concerned with the question of whether these products will be banned from sale pending publishing

of the regulations. It feels that clarification of this matter is necessary and assumes that such is not the intention of the Bill.

(c) The association notes the designation of products by their content of certain chemicals. It submits that the wording should be amended to clearly point out that the content refers to "hazardous levels" of the chemicals indicated.

(d) The bill does not specify that hazardous substances will be defined in the regulations according to their toxicity, flammability or corrosiveness. The association submits that they should be defined in this manner on the basis of an examination of biological hazards.

Participation of the Association in the Preparation of Regulations: The association advises of its willingness to assist in the establishment of equitable regulations under Bill S-22.

Based on its past and present working relationship with the Food and Drug Directorate it feels that it has a valuable background and is a valuable source of technical data which will allow it to contribute significantly to this task.

Mr. Chairman and honourable senators, this ends the written portion of our submission, but in summary, I would like to emphasize the following key points:

We in the Canadian Manufacturers of Chemical Specialties Association are in complete accord with what we understand the intent of the bill to be, namely:

(1) To prohibit the sale and advertising of certain hazardous articles and substances.

(2) To prescribe conditions and labelling safeguards under which useful household products, although hazardous if misused, may be advertised and sold.

We are concerned however that certain sections of the bill as presently written do not appear to be entirely consistent with the intent. These are as follows:

(1) Section 3, page 2—The prohibitive nature of this section appears to be unduly severe. This suggests to us that most household chemical products would be prohibited from sale until such time as a permissive list is published. We question whether this is consistent with the stated intent of the bill.

(2) Part II of the Schedule on page 8 of the bill is not limited to hazardous products because products with any amount of chlorine, alkali, acid, etc., are included. As written therefore many non-hazardous products would fall within the requirements of the

bill. For example, if taken to the extreme, water sold by municipalities for household use would be prohibited because of chlorine content. You will agree this is certainly not consistent with the intent of the bill.

Mr. Chairman, thank you for the opportunity afforded our association to appear here this morning.

The Chairman: Are there any questions which anyone wishes to ask Mr. Copeland? If not, thank you very much, Mr. Copeland.

Honourable senators, we have now the delegation from the Canadian Paint Manufacturers Association. Mr. J. M. Coyne, Q.C., parliamentary agent, is here representing them. Do you wish to speak on behalf of the association, Mr. Coyne?

Mr. J. M. Coyne, Q.C., Parliamentary Agent, Canadian Paint Manufacturers Association: No, Mr. Chairman, I am appearing with my colleagues. Mr. O'Neill is appearing for the association. There are present Mr. Roger Lamontagne, President of the Association; Mr. Eric Barry, Executive Vice-President of the Association; and Mr. M. R. Feeley, a senior technician of Canadian Industries Limited.

It is proposed that Mr. Barry speak to the brief.

The Chairman: Has the brief been filed?

Mr. Eric Barry, Executive Vice-President, Canadian Paint Manufacturers Association: Yes, Mr. Chairman, it has.

Mr. Coyne: Mr. Chairman, I hope that copies of it have been distributed.

The Chairman: Yes, they have. Mr. Barry?

Mr. Barry: Mr. Chairman, honourable senators, this submission is made on behalf of the paint manufacturer members of the Association. A list of these companies is appended.

Our concern is with Part I of Bill S-22 and specifically with the products listed in paragraphs 2 and 3 of Part I of the Schedule. These are:

2. Furniture, toys and other articles intended for children, painted with a paint containing lead in excess of 0.1 per cent expressed by weight of lead oxide.

3. Paints for household use having a flashpoint of less than 40 degrees F.

The effect of section 3 of the proposed act will be to prohibit the advertising and sale of these products. We respectfully submit that absolute prohibition is unnecessarily stringent.

However, we do not object to the concept of regulation. If improperly used, these can be hazardous substances. Therefore, we wish to recommend that consideration be given to transferring these products to Part II of the Schedule which will have the effect of making them subject to regulation. We further recommend that the specific limits expressed by the words "in excess of 0.1 per cent expressed by weight of lead oxide" and "having a flashpoint of less than 40 degrees F." be deleted from the product descriptions and that these limits be left open to be decided by regulation.

We suggest the following wording:

2. Furniture, toys and other articles intended for children painted with a paint containing lead.

3. Paints for household use which can be inflammable.

It is now the practice in the industry to supply only "lead-free" paints to manufacturers of articles intended for use by children. It is also the practice to clearly and prominently print a warning on the label when a product is inflammable. To the best of our knowledge most, if not all, manufacturers follow this practice. Regulation would serve to make mandatory on all that action which is now being taken by responsible companies and we have no objection to this.

It is our opinion that Bill S-22 as it is now written would, in relation to these products, go too far and also not go far enough in providing protection for children and the consuming public.

As presently written it is likely to create problems of definition, interpretation and technical measurement. These aspects also prompt us to make the suggestions we have already put forward.

Paints for children's toys and furniture have been of concern to the industry for years. In the United States, a standard specification has been developed by the American Standards Association Sectional Committee on Prevention of Control of Hazards to Children. This committee was organized in 1953 by the ASA under the sponsorship of the American Academy of Pediatrics. More than twenty associations are represent-

ed on the committee including the Lead Industries Association and the paint industry. The committee has published American Standard Z66.1-1964.

Here are some extracts from the Standard:

1. Scope and Purpose

This standard specifies the requirements for coatings such as paints, enamels, lacquers, etc., applied in liquid form, that are deemed suitable from a health standpoint to be used to paint children's toys or furniture or interior surfaces so that the danger of poisoning will be minimized if, by chance, some of the dry coating should be ingested by a child.

2. Specifications

A liquid coating material to be deemed suitable, from a health standpoint, for use on articles such as furniture, toys, etc., or for interior use in dwelling units where the dry film might be ingested by children:

(1) Shall not contain lead compounds of which the lead content (calculated as Pb) is in excess of one per cent of the total weight of the contained solids (including pigments, film solids, and driers);

(2) Shall not contain compounds of antimony, arsenic, cadmium, mercury, or selenium of which the metal content individually or in total (calculated as Sb, As, Cd, Hg, Se, respectively) is in excess of 0.06 per cent by weight of the contained solids (including pigments, film solids, and driers);

(3) Shall not contain barium compounds of which the water soluble barium (calculated as Ba) is in excess of one per cent of the total barium in such coatings.

3. Marking

Coatings complying with this standard may be marked. 'Conforms to American Standard Z66.1-1964 for use on surfaces which might be chewed by children.'

It will be noted that the maximum lead content permitted by this Standard is 1 per cent. This maximum is generally accepted in the United States by those states and cities where ordinances affecting this type of product exist. Such cities include Baltimore, Cincinnati, Jersey City, New York City, Wilmington and states include California and Kansas. All of these specify 1 per cent. We are not aware of any legislation specifying any other limit.

Because of this, we feel that the limit of 0.1 per cent is unnecessarily restrictive. Minute traces of lead totalling a fraction of one per cent may appear for a variety of reasons in paint products that are nominally "lead-free". Such traces would be well within a 1 per cent limit but could exceed 0.1 per cent depending on how the measurement is carried out.

Measurement method is not precisely stated in Bill S-22. Is it to be 0.1 per cent of total weight including liquid and solids or 0.1 per cent of solids? As the liquid part can weigh as much as the solids part of a paint product, it makes a difference.

The Chairman: How would you weigh the lead oxide?

Mr. Barry: I would like to have my accompanying paint chemist, Mr. Feeley, answer that question, if I may.

The Chairman: Certainly. I was just wondering about the language, because in ordinary English the phrase "by weight of lead oxide" would simply mean that you get lead oxide and you weigh it. If it is in solution, how do you weigh it? You do not weigh the solution containing it, do you?

Mr. M. R. Feeley, Laboratory Services Manager, Paint Research Laboratory, Canadian Industries Limited, Canadian Paint Manufacturers Association: You would have to go to the analytic laboratory, and have the analytic chemist remove it and weigh it by special procedures.

The Chairman: So the fact that it may occur in solution does not affect the weight.

Mr. Feeley: Not at all.

Senator Molson: Here it seems to be lead as lead, but in our legislation it is lead as in lead oxide. Is that right?

The Chairman: Is there a difference there?

Mr. Feeley: Lead can be determined either as a metallic lead or as a lead oxide which is a litharge.

Senator Molson: In our legislation it is determined as the oxide. Specifically here it is determined as lead. They are different, then.

Mr. Feeley: It is just a different way of expressing the same thing.

Senator Molson: The figures would not mean the same thing, however.

Mr. Feeley: It would be within 5 per cent.

Mr. Barry: In this respect we feel that Bill S-22 goes too far and is unduly restrictive.

It does not go far enough in that it omits mention of other ingredients covered by Z66.1-1964 such as antimony, arsenic, cadmium, mercury selenium and barium.

It also omits paints for interior surfaces in buildings and paints which a person may buy to repaint children's toys and furniture.

Let us turn now to paints for household use having a flashpoint of less than 40 degrees F.

There are not very many products for this use with a flashpoint this low. However, there are some types of shellac with a flashpoint at about 40 degrees F., and there are some types of floor and furniture lacquers with a flashpoint below this mark. Some paint removers would have to be included.

It seems to us that the man who makes furniture as a hobby and wishes to finish it with this type of furniture lacquer should not be prohibited from doing so provided he is clearly warned that he is dealing with an inflammable product. It is at least common practice and probably universal practice within the industry today to print such warnings on labels. We have no objection to regulations making such warnings mandatory.

But why 40 degrees F. and not 35 degrees F. or 50 degrees F.? Industry practice is to print warnings on labels of products with much higher flashpoints than 40 degrees F.

The Federal Hazardous Substances Labeling Act in the U.S. contains the following definition:

The term 'extremely flammable' shall apply to any substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, and the term 'flammable' shall apply to any substance which has a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; except that the flammability of solids and of the contents of self-pressurized containers shall be determined by methods found by the Secretary to be generally applicable to such materials or containers, respectively, and established by regulations issued by him, which regulations shall also define the terms 'flammable' and 'extremely flammable' in accord with such methods.

In state and municipal laws in the United States and in industry practice, these standards are widely followed. In some cases the word "combustible" is used when the material will burn but where the flashpoint is above 80 degrees F.

We favor warnings on labels. We feel that outright prohibition of the sale of paint products with a flashpoint below 40 degrees F. would cause hardship to both the makers and users of these products.

Again we foresee problems of definition and interpretation. What is a paint? Does it mean paint remover too? What is meant by "for household use"?

How would a paint retailer distinguish between a buyer purchasing a low flashpoint floor lacquer to use in a small commercial establishment and one buying it for use in his home? Yet, the first sale would be legal and the second illegal under Bill S-22.

What test shall be used to determine flashpoint? What is to be done about paints in aerosol containers sold for home use where technically there is no flashpoint (the definition of flashpoint assumes a liquid) but a different type of test and measurement because the product is in vapor form?

The whole problem as with lead-free paints is complex. That is why we recommend amending the product descriptions in Bill S-22 and the transfer of these products to Part II of the Schedule so that the exact conditions under which they may be advertised and sold may be spelled out by regulation. Such regulations should draw on the large body of technical information and experience now available so that consumers of these products, the general public and particularly children may be adequately protected in the light of a realistic appreciation of the degree of risk involved.

Our Association and our industry are willing to cooperate with the Department of National Health and Welfare in this regard.

The Chairman: Have the members of the committee any questions?

Senator Leonard: I suppose the witness realizes that in the first instance by adopting the amendment he suggests the description would be wider than in the present bill, and so the manufacturer and people engaged in trade would have to depend upon all the regulations. I presume that is your position, is it not?

Mr. Barry: That is correct.

Senator Leonard: You are widening the definition and depending upon the regulations.

Senator Thorvaldson: May I ask whether they have widespread legislation in the United States in regard to matters covered by this bill and whether the methods proposed in this bill are similar to those in use there. Are their labelling regulations as comprehensive as those proposed in this legislation?

Mr. Barry: I have not discussed this aspect with the Department of National Health and Welfare. However, I did discuss the question of labelling with authorities in the United States. I am informed that to the best of their knowledge this is not the case. There is a considerable body of the United States federal, state, and municipal legislation governing many aspects of the labelling field. Whether it is widespread or not is, of course, a question of judgment. I would say no, in the sense that, for example, ordinances affecting the lead content of paint are in effect in only three states, and in only six or seven cities out of the entire number of cities and states in the United States. I think it should be recognized that in the United States and also in this country the standards laid down by the American Standards Association standard are very widely followed by industry. Probably this is the reason why legislation in the United States with regard to lead-free products is not more widespread.

Senator Thorvaldson: Are the standards you refer to in your brief covered by federal legislation or by state legislation?

Mr. Barry: This is a voluntary standard prepared by the American Standards Association in conjunction with the American Academy of Pediatrics, and 20 other groups. The operative parts have been written into state and municipal legislation, as I have said.

Senator Thorvaldson: So this is not federal legislation.

Senator Burchill: Is there any federal legislation in such matters in the United States?

Mr. Barry: Well, there is a hazardous substances act.

The Chairman: There is wide power in section 8 of the bill for the Governor in Council to deal with Parts I and II by adding or by deleting so that if representations are made

that carry sufficient merit to convince the department that some items should be deleted from Part I or Part II, or should be moved from Part I to Part II, or that something else should be added to either Part I or Part II, there is wide power to do that by regulation.

Senator Thorvaldson: Is this not entering into the field of adding to legislation by regulation?

The Chairman: It is not adding. I think there are similar provisions in the Narcotic Control Act.

Senator Leonard: With respect, having regard to the fact that the statute does make a difference between Part I and Part II, I would question whether section 8 gives the power to take something out of Part I and put it into Part II. It seems to me it could be interpreted that by striking out one section and adding something new, you are using the authority in section 8 to the extent that it has the effect of changing the act.

The Chairman: You may be right. The section says:

8. The Governor in Council may by order amend Part I or Part II of the Schedule by including therein any substance or article that he is satisfied

(a) is or contains a poisonous, toxic inflammable, explosive or corrosive substance or other substance of a similar nature, and

(b) is or is likely to be a danger to the health or safety of the public,...

There you have the power to add;

... or by deleting therefrom any substance or article the inclusion of which therein is, in his opinion, no longer necessary.

There is no provision for shifting from one part to the other.

Senator Leonard: Parliament has made this distinction between the two.

Senator McCutcheon: But it does say "or by deleting therefrom any substance or article the inclusion of which therein is, in his opinion, no longer necessary." Surely he can decide that it is no longer necessary to keep something in section 1, and he can also decide under the previous part that it is necessary to put it into section 2. I think the power is there, because it is all a matter of

his opinion. If it is his opinion that something is no longer required in section 1 it can be removed therefrom, and if it is also his opinion that it should be included in section 2 it can be inserted there.

The Chairman: I am not at all satisfied that there is that power. Of course this is only one man's opinion. But I am not satisfied there is that power in section 8 to shift from one part to the other.

Senator McCutcheon: But it would not be done as a shift. It would mean passing two Orders in Council; the first one would delete the item from section 1, and the second Order in Council would insert it or add it in section 2.

The Chairman: It would need an analysis of the qualities of the substance involved to see what relationship it would have to either part. The words in the section are "poisonous, toxic, inflammable, explosive or corrosive substance or other substance of a similar nature."

Senator McCutcheon: Just about everything we eat contains something to which one or more of these descriptions could apply.

The Chairman: Well, I am not too sure about that.

Mr. J. M. Coyne, Q.C., Parliamentary Agent, Canadian Paint Manufacturers Association: I wonder if I might say a few words here in connection with this point regarding section 8. Speaking for myself I am satisfied that the power is there to delete from one part and to add to another part which, in effect, means to shift from one part to the other.

I think what concerns the paint manufacturers and, apparently, more so the chemical specialty manufacturers, from what they said a moment ago, is the fact that, on the face of this statute, it comes into force on proclamation, and immediately it comes into force those articles mentioned in Part I of the schedule become illegal.

It may well be the intention or the case, as was suggested by officers of the Crown in connection with the other bill, that the bill will not be proclaimed until regulations may be issued simultaneously with the proclamation, at which time this schedule may be totally varied as it comes into force from how it appears in the statute.

As I say, we have no way of knowing whether this is the case, and what concerns us, and what is the subject matter of Mr. Feely's submission, is that one the face of the statute, once it is proclaimed and comes into force, the sale or advertisement of those substances now mentioned in Part I becomes illegal. I do not need to repeat the criticisms that have been made in the brief as to definition or choice of these particular substances.

Senator Leonard: And if the articles in Part I were put into Part II, the regulations might still come back that puts them effectively into Part I.

Mr. Coyne: The position is that if these substances were mentioned in Part II, we would be content to depend upon the definitions and the provisions of the regulations regulating the sale and advertisement of these substances.

Senator Leonard: You will take your chances on whether or not the description still might not come back to the way it is now in Part I?

Mr. Coyne: That is the position we are taking, and I think we are assuming that in the meantime there will be liaison and discussions with appropriate officers of the department in which any views these people might have will be given consideration.

Senator Leonard: Can you tell us why there is the terrific difference, between 0.1 per cent in Part I and 1 per cent, which is the test in the American standards? That is a 10-times difference.

Dr. Barry: I am not sure where the 0.1 per cent came from. We questioned its necessity. We feel, on the basis certainly of American experience, 1 per cent is adequate.

Senator Leonard: Do you think there is some difference in the measurement?

Dr. Barry: I am advised it is not sufficiently significant that it should result in this wide discrepancy in setting the technical method. Mr. Feely has noted that though there was a difference in the measurement method, it would be only a 5 per cent difference in the end result.

Senator Leonard: Do you think a content of, say, in excess of 0.1 per cent is dangerous?

Mr. Feeley: I think the 1 per cent taken in the United States is based on experience over a number of years, and I do now know the origin of the 0.1 per cent.

The Chairman: But the senator's question was: Do you think that 0.1 per cent is dangerous?

Senator Leonard: Let us say 0.2 per cent; do you think that is dangerous?

Mr. Feeley: My opinion is that it is not. When one gets up to 1 per cent, then it is considered dangerous.

Senator Leonard: Do you represent the view, would you say, of your association that 0.2 per cent would not be dangerous?

Mr. Feeley: In this respect, I am only giving my own opinion.

Senator Leonard: Have you taken any kind of consensus or viewpoint on this?

The Chairman: I think I should point out that Mr. Feely is the Laboratory Services Manager, the Paint Research Laboratory, Canadian Industries Limited.

Senator Leonard: He must be a very good man, then.

The Chairman: I would think that he has some knowledge, yes.

Senator Leonard: Perhaps I should disqualify myself!

Senator Thorvaldson: Mr. Chairman, I have been wondering, in listening to the questions and so on, in the light of section 8—where, obviously, the Governor in Council is entitled to add to or delete from the schedule—why we should have a schedule at all? Might it not be better to leave the question of the substances and the percentage of flashpoint, and so on, up to the department, which I think we know in practice usually does not make regulations without dealing with the paint and the chemical industries, they finally coming to an agreement as to what should be contained in the schedule. That would also get over the problem Mr. Coyne cited, which I can quite see is a serious one. The moment this bill becomes law, all these substances become illegal; whereas perhaps it would be preferable if there could be negotiations, and that would give the department more elasticity and flexibility in

determining the substances, and discussing it with industry, and so on. I was wondering what Mr. Curran would say on that, whether it would interfere with the legality of the legislation or the legal position.

The Chairman: These are the mechanics, and I think maybe we should have a viewpoint from Dr. Crawford.

Are you going to speak on this Dr. Crawford?

Dr. Crawford: Mr. Chairman, I must first disclaim any particular expertise in the chemical questions which are raised today. I do, however, want to express my appreciation for the co-operation which we have in the past received from many manufacturing industries, and the Chemical Specialties Association.

On the points that they mentioned with respect to Part III of the act—and this was mentioned just again by the paint manufacturers—it would seem to me that anything that is not on the market and is not in either Part I or Part II of the schedule would continue to remain on the market and be sold, until such time as we could get around to putting it on Part I or Part II. This may be a more or less lengthy process, because of a number of considerations.

As I mentioned, when I gave evidence on the first occasion, our desire to have this schedule in this form is to enable us to act quickly in Part I in the event of an emergent urgent situation, to take things off the market. And if, on second view, we realize this is a little extreme, we can do the double shift Senator McCutcheon talked about.

The Chairman: You mentioned the beads the other day.

Dr. Crawford: Yes. We take them off the market and stop the situation quickly. Then we can reconsider and delete it from Part I and put it on Part II, or forget it altogether. This is the sort of operational approach we should take.

I would just like to make one comment on the schedule, Part I:

Furniture, toys and other articles intended for children...

We do not anticipate any great difficulty with reputable manufacturers, paint manufacturers, in this country or in the United States. What we may possibly be faced with is coun-

tries far away, not subject to our regulations, importing furniture or toys for children with harmful paints, and we want to be able to take these off the market. I do not think that materials under Part II, which deals essentially with labelling, is going to be of any advantage to a six-month old child in a crib who nibbles away at the rungs of the crib that are coated with harmful paint. The label on the tin of paint is not going to get through to the child in a crib. So, I do not think a shift of this sort of thing from Part I to Part II would produce the desired effect.

The Chairman: The only question there, I think, doctor, would be whether in taking your measurement as 0.1 per cent that is too low.

Dr. Crawford: I am just coming to this point, sir, and as I disclaim expertise in this area, these standards were given to us, I am given to understand, by the National Research Council, and we received the brief from the industry last night. This may be too rigid. We are not prepared to say. We would like an opportunity to reconsider this particular point and the briefs that are involved here, and to report back to you at a further session.

The Chairman: Would that apply also to the flashpoint and 40°F.?

Dr. Crawford: I would say yes, sir, although I do not think that this particular question is as much in doubt as perhaps that of the paint, but we will reconsider it.

Senator Leonard: I take it that as long as the regulations come into effect at the same time as the statute those items in Part I could go under Part II and be dealt with by the regulations. Is that not right?

Dr. Crawford: The bill before you proposes a schedule with three items in Part I and four items in Part II.

Senator Leonard: The items in Part II only come into effect by regulation?

Dr. Crawford: Yes.

Senator Leonard: If those regulations came into effect at the same time as the statute the items in Part I could be dealt with by regulations?

Dr. Crawford: Yes. We will add to Part I no doubt as circumstances warrant it.

The Chairman: In view of what Dr. Crawford has said, that they would like the opportunity to consider the submissions in relation to item 2 in Part I, and also the flashpoint, which is item 3, are we prepared to go ahead?

Senator Leonard: No, let the bill stand for further consideration.

The Chairman: Is that the view of the committee?

Agreed.

The Chairman: Your submissions will be considered.

Whereupon the committee concluded its consideration of the bill.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 16

Second and Final Proceedings on Bill S-24,

intituled:

"An Act to amend the Canada Deposit Insurance Corporation Act".

WEDNESDAY, DECEMBER 6th, 1967

WITNESS:

Department of Insurance: R. R. Humphrys, Superintendent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	O'Leary (<i>Carleton</i>)
Aseltine	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Leonard	
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(46).
Gélinas	Molson	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 8th, 1967:

"The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Grosart resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Macdonald, P.C., for second reading of the Bill S-24, intituled: "An Act to amend the Canada Deposit Insurance Corporation Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 6th, 1967.

(17)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.50 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Benidickson, Burchill, Croll, Everett, Fergusson, Guin, Haig, Irvine, Lang, Leonard, MacKenzie, McCutcheon, McDonald, Molson, Pearson, Pouliot, Rattenbury, Smith (*Queens-Shelburne*) and Thorvaldson. (22)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

Consideration of Bill S-24, "An Act to amend the Canada Deposit Insurance Corporation Act", was resumed.

The following witness was heard:

Department of Insurance:

R. R. Humphrys, Superintendent.

Amendments:

1. On Motion of the Honourable Senator Molson it was *Resolved* to add a new clause 1 to the said Bill.

2. On Motion of the Honourable Senator McCutcheon it was *Resolved* to amend the said Bill as follows:

Page 4: Strike out subsection (3) at line 12 and substitute a new subsection.

3. On motion of the Honourable Senator Leonard it was *Resolved* to add a new clause 4 to the said Bill.

N.B. Text of the above amendments will be found in the Report of the Committee on the next page.

On Motion duly put it was *Resolved* to report the said Bill as amended.

At 11.20 a.m. the Committee proceeded to the next order of business.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, December 6th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-24, intituled: "An Act to amend the Canada Deposit Insurance Corporation Act", has in obedience to the order of reference of November 8th, 1967, examined the said Bill and now reports the same with the following amendments:

1. Renumber clauses 1 and 2 of the Bill as clauses 2 and 3 respectively.

2. Page 1: Immediately after line 3, insert the following as new clause 1:

"1. Section 13 of the *Canada Deposit Insurance Corporation Act* is amended by adding thereto, immediately after subsection (1) thereof, the following subsections:

'(1a) Where a person has deposits with two or more member institutions that amalgamate and continue in operation as one member institution (in this section called the 'amalgamated institution'), a deposit of that person with an amalgamating institution on the day the amalgamated institution is formed, less any withdrawals from such deposit, shall, for the purpose of deposit insurance with the Corporation, be deemed to be and continue to be separate from any deposit of such person on that day with the other amalgamating institution or institutions that become part of the amalgamated institution, but a deposit made by such person with the amalgamated institution after the day that the amalgamated institution is formed shall be insured by the Corporation only to the extent that the aggregate of that person's deposits with the amalgamated institution, exclusive of the deposit in respect of which the calculation is made, is less than \$20,000.

(1b) For the purpose of deposit insurance with the Corporation, where a member institution, pursuant to a plan or arrangement acquires the undertakings and assets of another member institution, those member institutions shall be deemed to be amalgamating institutions and subsection (1a) shall apply where a person has deposits with both such institutions.'"

3. Page 1: Strike out lines 4, 5 and 6 and substitute therefor the following:

"2 (1) Section 19 of the said Act is repealed and the following substituted therefor:"

4. Page 4: Strike out lines 12 to 21, both inclusive, and substitute therefor the following:

"(3) For the purpose of enabling the Corporation to carry out an insuring arrangement referred to in subsection (1) or provided for in an agreement under subsection (2), the Governor in Council may, by regulation, make provision for any matter or thing arising from such insuring arrangement or agreement."

5. *Page 5*: Immediately after line 25, add the following as new clause 4:

“3. The power of the Board of Directors of the Corporation to define the expression “deposit”, as set out in paragraph (g) of subsection (1) of section 12, terminates on the expiration of one year from the day on which this Act comes into force, but such termination does not affect any by-law made before the expiration of such year.”

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 6, 1967

The Standing Committee on Banking and Commerce, to which was referred Bill S-24, to amend the Canada Deposit Insurance Corporation Act, met this day at 10.50 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: We now have before us for consideration Bill S-24, to amend the Canada Deposit Insurance Corporation Act. The members of the committee will recall that when we were considering this bill the last time we had a full explanation of it from Mr. Humphrys. We then discussed two amendments, and then adjourned so that a draft might be made of them. We now have this draft before us.

I understand that in connection with our consideration of these amendments there may be another one that the Department wishes to propose.

Perhaps I should tell you what those amendments are. The most simple one is to subsection (3) on page 4 of the bill. This part of the bill deals with arrangements under which a province undertakes this business of deposit insurance itself, and it relates to the agreements that give authority to the provinces to make such arrangements.

It was the view of the Committee that the power to make regulations by by-law of the corporation, which administers the provisions of this Act, went too far in that it permitted what might be called legislation by by-law. The proposal which you have before you, therefore, is that the words "that is not provided for by this Act", which are to be found in the last line of subsection (3) and beginning on line 20, be struck out, and that a period be inserted after the word "agreement". It was considered that if those words are left in then what is, in effect, being done is giving authority to legislate by by-law or regulation.

This was the view of the Committee, and while we played with various forms of making this amendment, this would appear to be the simplest one.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: The amendment also includes the omitting of the words "adapt any of the provisions of this Act", et cetera.

The Chairman: Yes. This would involve a rewriting of subsection (3) so that it reads as follows:

For the purpose of enabling the Corporation to carry out an insuring arrangement referred to in subsection (1) or provided for in an agreement under subsection (2), the Governor-in-Council may, by regulation, make a provision for any other matter or thing arising from such insuring arrangement or agreement.

That would replace what we have now in the bill which, in the view of this Committee at its last meeting, went too far, in that it was entering into the field of legislation.

This has been discussed with the departmental representatives, and there is no objection, unless Mr. Humphrys is going to voice one today.

Mr. R. R. Humphrys, Superintendent of Insurance: No, Mr. Chairman and hon. senators. The wording of this amendment has been discussed with the draftsmen in the Department of Justice, and they have advised me that this proposed wording would meet the needs of the corporation in this connection. So, I am not raising any objection.

The Chairman: This amendment has been moved and seconded. Is it agreed?

Hon. Senators: Agreed.

The Chairman: Another question was raised at the last meeting of the Committee in respect to the definition of the word "deposit". The Committee also asked the

chairman and the legal adviser to the committee to prepare an amendment to deal with this situation.

"Deposit" was not defined in the original bill which was passed in February of this year, and the explanation given at that time was that this was a venture into something new, and that having regard to all the possible combinations of things that could be properly described as a deposit, it was something about which they needed a little time to think, and the power was given to define "deposit" by by-law and regulation.

But "deposit" has been subsequently defined by Order-in-Council, and the question was raised, when we were considering these amendments, whether, since there is now a definition of "deposit", we should have it in the Act rather than in a regulation.

This was discussed at the last meeting, and the view expressed by Mr. Humphrys at that time—and there was merit in it—was that it was a little early to determine all of the extensions of the definition of "deposit". The view of the committee was: "Well, you tell us how much time you need in order to feel that you have a satisfactory definition that could be locked into a statute, and in respect of which, if there is to be any subsequent change, Parliament would have to deal." The answer was that a year from the time this bill would become law should provide the necessary time.

The question was then raised—I think I raised it and the committee agreed—that the power in the original Act to define "deposit" by regulation should have a time limit on it; in other words, that a year from the time this bill receives royal assent the power in the Act to define "deposit" by regulation should terminate, and that whatever may be the definition at that time will remain the definition until Parliament comes along and makes some change in it.

Is that a correct statement of the position at the last meeting of the committee, Mr. Humphrys?

Mr. Humphrys: That is my recollection, Mr. Chairman.

The Chairman: We have, therefore, come up with this amendment that has been submitted to the departmental officers. It would add a new clause 4 to this bill. The bill, in effect, contains only two clauses, and this

amendment would add clause 4 which reads as follows:

The power of the Board of Directors of the Corporation to define the expression "deposit", as set out in paragraph (g) of subsection (1) of section 12, terminates on the expiration of one year from the day on which this Act comes into force, but such termination does not affect any by-law made before the expiration of such year.

All that this means is that when that power terminates they are stuck with whatever the definition is, and Parliament is the only place they can go to have it changed.

Have you any adverse comments to make on what we propose to do, Mr. Humphrys?

Mr. Humphrys: Mr. Chairman, I have nothing to add in this connection to the comments I made two weeks ago when this was under discussion. The corporation feels that it is still too early to fix the definition of "deposit" in the statute. We think we should have some more time, at least, which will permit us to audit all the returns once, or perhaps twice, around. As a general principle, we have no objection to a definition of "deposit" being in the statute, and this would give us another year in which to meet new provisions, or to make adaptations in order to meet the problems that arise.

I think it should substantially meet the needs of the corporation and allow it to operate in a way that would be in the best interests of the purposes for which it was formed.

The Chairman: This amendment has been moved and seconded. Is it agreed?

Hon. Senators: Agreed.

The Chairman: The only other item in connection with this bill is, as I understand it, that there is an amendment which the Department is proposing.

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: Perhaps you would read it.

Mr. Humphrys: Yes. I have copies of it here.

Senator Leonard: Where will this come in the bill?

The Chairman: I think it should come in as another section of the bill, should it not? It should be a new clause. We have just added a new clause 4.

Mr. Humphrys: It amends section 13 of the act. The usual form would be to put it into section 1.

The Chairman: I think what we should do is make it clause 1 of the bill and renumber the other sections accordingly.

Mr. Humphrys: This proposed amendment deals with a problem that has recently come up and it relates to the question of the amalgamation of a number of institutions. There is an amalgamation of two particular institutions which has just taken place, the Canada Permanent Trust Company and the Eastern and Chartered Trust Company. A question has arisen concerning the continuation of insurance on deposits that a person had with each of the institutions before amalgamation. It was thought it would be wrong to leave a person in a position of having the insurance removed because of the amalgamation.

As you will recall, the act provides a maximum of \$20,000 of insurance for any one depositor in an institution. If there were a case where one person had \$20,000 deposited in the Eastern and Chartered Trust Company and \$20,000 deposited in the Canada Permanent Trust Company immediately before the amalgamation, he would have \$20,000 of insurance in each case. Immediately after the amalgamation these deposits would be merged into the amalgamated company, and if no change were made that person's insurance would be promptly cut back to \$20,000. This might be unfair to him, because he might have entered into the purchase of long term instruments having a maturity date several years hence and he could not necessarily change them because of the amalgamation. Indeed, some depositors might not even know the amalgamation had taken place.

The purpose of this amendment is therefore to provide that where an amalgamation takes place any deposits which are taken over in the course of the amalgamation will continue to be insured in the hands of the new institution. There may be cases where a

particular person has more than \$20,000 of insurance in an amalgamated institution by reason of continuation of this coverage.

The Chairman: This keeps up the premium income?

Mr. Humphrys: Yes. If a case arises where one person has more than \$20,000 insurance because of the amalgamation of deposits, this will continue until such time as withdrawal from those deposits or maturity of instruments reduces the amount of his insurance to the normal \$20,000 limit, then it will go on in the normal fashion.

The Chairman: When you cite the case of the amalgamation of the Eastern and Chartered Trust Company and the Canada Permanent Trust Company, the only application would take place in respect of people who had accounts with both of those companies?

Mr. Humphrys: That is correct, yes.

The Chairman: Any discussion on this proposed amendment? Those in favour?
Carried.

Senator Burchill: Does this bill cover credit unions?

Mr. Humphrys: No, it does not.

Senator Burchill: A small community with \$1 million and \$2 million deposits are not insured?

The Chairman: The place where you should have raised that was when we dealt with the original bill.

Any other suggested changes?

Our Law Clerk will see to it, of course, that the necessary technical changes will be made.

Shall I report the bill with this amendment?

Agreed.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 17

Third and Final Proceedings on Bill S-21,

intituled:

"An Act to amend the Food and Drugs Act".

WEDNESDAY, DECEMBER 6th, 1967

WITNESSES:

Department of National Health and Welfare: Dr. J. N. Crawford, Deputy Minister; Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services; R. E. Curran, General Counsel.

Faculty of Medicine, University of Toronto: Dr. E. F. W. Baker, Dr. Lionel P. Solursh.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gélinas	Molson
Aseltine	Gershaw	O'Leary (<i>Carleton</i>)
Baird	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Leonard	
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(47).

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 1st, 1967:

"Pursuant to the Order of the Day, the Honourable Senator McDonald moved, seconded by the Honourable Senator Beaubien (*Provencher*), that the Bill S-21, intituled: "An Act to amend the Food and Drugs Act", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Farris, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 6th, 1967.

(18)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.20 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Benidickson, Burchill, Croll, Everett, Fergusson, Gouin, Haig, Irvine, Lang, Leonard, MacKenzie, McCutcheon, McDonald, Molson, Pearson, Pouliot, Rattenbury, Smith (*Queens-Shelburne*) and Thorvaldson—(22).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

Consideration of Bill S-21, "An Act to amend the Food and Drugs Act", was resumed.

The following witnesses were heard:

Department of National Health and Welfare:

Dr. J. N. Crawford, Deputy Minister.

Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services.

R. E. Curran, General Counsel.

Faculty of Medicine, University of Toronto:

Dr. E. F. W. Baker.

Dr. Lionel P. Solursh.

The Honourable Senator Sullivan read into the record a letter written to him by Dr. Hunter of the University of Toronto.

On Motion of the Honourable Senator McCutcheon it was *Resolved* to report the said Bill with the following amendment:

Page 4, line 24: Add the words "or any salt thereof".

On Motion of the Honourable Senator Molson it was *Resolved* to defer consideration of the amendment regarding advocating the use of a restricted drug for one year and then invite the Minister to appear with his comments thereon.

At 12.00 noon the Committee proceeded to the next order of business.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, December 6th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-21, intituled: "An Act to amend the Food and Drugs Act", has in obedience to the order of reference of November 1st, 1967, examined the said Bill and now reports the same with the following amendment:

1. *Page 4*: Strike out line 24 and substitute therefor the following:

"1. Lysergic acid diethylamide or any salt thereof."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 6, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-21, to amend the Food and Drugs Act, met this day at 11.20 a.m., to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, I would call the meeting to order. We have four bills this morning, for three of which we have conducted the hearing in part. This morning we are going to proceed first with Bill S-21, dealing with LSD. If you will recall, the last time we heard a number of witnesses, and one amendment was suggested. We have two further witnesses this morning to present the viewpoint which is in support of the legislation. These witnesses are two doctors from the faculty of medicine at the University of Toronto, Dr. E. F. W. Baker and Dr. Lionel P. Solursh, and I suggest that we hear them first.

Hon. Senators: Agreed.

The Chairman: Then we will hear Dr. Baker first. Will you tell us your qualifications and then proceed to give your evidence, Dr. Baker.

Dr. E. F. W. Baker, Faculty of Medicine, University of Toronto: I am an M.D. in Toronto and a psychiatrist in practice at the Toronto Western Hospital. I am on the teaching staff of the University of Toronto and I am a Fellow of the Royal College. Would you like a statement of my position?

The Chairman: Yes.

Dr. Baker: I have read the proposed bill and I have gone through some evidence and I have read a few of the relevant acts. I have had seven or eight years in clinical experience with the hallucinogen, LSD. I have been to an international meeting on LSD and I have published some articles and have co-

authored a book with Dr. Solursh on the matter. My position is this: we have a new type of chemical or medicine called "hallucinogens" that has not been too well known. LSD is the one at issue. These drugs make you see things, smell things, taste things, and do things. They are not narcotics; they are not sedatives; they are a new type of drug which have problems that are new, and they need new legislation for these problems.

There are perhaps four points: first, it is a new type of drug; second, it is at the experimental stage in medicine. It shows some promise and it shows some risks, as does anything in the experimental stage. The third point is that it is a powerful, wrongly used dangerous, rightly used who knows, kind of drug. And the fourth point is that it is in common street use in Canada nowadays.

Senator Pearson: Is it readily available?

Dr. Baker: I am afraid it is, sir, readily available on the street. It is difficult available to us.

Senator Croll: How can it be so difficult for you through normal, regulatory authorities but so easy for others? Is there a difference in price, a difference in where they get it?

Dr. Baker: It is just difficult for us because we have to do a lot of thinking before we set up a research project, and we have to go through the ropes. But it is easy to get on the street because it is a low price, widely ranging drug on the street.

Senator Croll: Where does it come from?

Dr. Baker: I do not know, sir. It is always from the other country. It is always from somewhere else.

Senator Croll: Where do you get it yourself?

Dr. Baker: I get mine from Connaught Laboratories, as approved by the Food and Drug Directorate.

Senator Croll: And the other, you say, comes in from another country. It must be coming in illegally.

Dr. Baker: It comes in. I do not know where it comes from. It comes in funny tablet form, sugar cubes and blotting paper and all sorts of forms, sir. It is cheap, I think. I don't know how much it costs to get a dose on the street...

Dr. Lionel P. Solorsh, Faculty of Medicine, University of Toronto: ...roughly around \$5—between \$5 and \$10. It depends very much on the dose, sir. It comes in doses varying on the street between about 250 and 1,800 micrograms, and there is a wide variation in the dose.

Dr. Baker: I might add that people also chew morning glory seeds and get a "trip" from that because they contain substances like lysergic acid diethylamide.

Senator Leonard: Why do you find it so difficult to get supplies from laboratories?

Dr. Baker: I am sorry if I gave the wrong impression. I did not say or I did not intend to say that it was really difficult.

Senator Sullivan: Mr. Chairman, both doctors have prepared an excellent brief and I think either one of them should read it into the record of the committee so that it may be on the record.

The Chairman: Perhaps Dr. Solorsh would tell us briefly what his background and experience is before reading to us the brief which has been prepared.

Dr. Solorsh: Mr. Chairman, honourable senators, Doctor of Medicine, University of Toronto, 1959, diploma in Psychiatry, University of Toronto, 1962, and Gold Medallist; Specialist Certificate in Psychiatry, 1964, Royal College; and Fellowship in Internal Medicine, modified for Psychiatry, 1965, Royal College. I am presently Associate, Department of Psychiatry, University of Toronto, and Active Attending, Department of Psychiatry, Toronto Western Hospital. Much of my work has been with adolescents and young adults, and my familiarity with LSD comes from research and treatment in hospital settings in the past seven years, through the emergency department and through the community itself and being in contact with street use.

There is clearly widespread use of hallucinogenic drugs in present North American

urban and semi-urban areas. A very wide age range is involved, although most commonly the late 'teens and early twenties. No social class is exempt, but different drug use patterns vary with specific groups. In general, a disproportionately high number of LSD users would seem to come from middle-class homes.

Compared to the widespread use of such drugs, the number of acute complications that reach medical attention are relatively small. Nonetheless, such complications are seen in significant numbers and may be very severe, including temporary or persistent psychotic illnesses, depressions, disruptive behaviour, the possibility of birth deformities and, rarely, suicide or homicide. In addition, there is good reason to believe, from contact with the street situation, that many unpleasant, frightening and dangerous experiences, which are not brought to medical attention, do occur quite frequently. We have reason to be very concerned about this situation.

Our knowledge of long-term complications is inadequate. We do see longstanding behavioural and personality pathology and the occasional persistent or recurrent drug-like state. There is some suggestion, but no convincing evidence at present of induced chromosomal change.

Bill S-21 recognizes illusinogenic drug abuse as a problem and as an individual and social danger. This abuse is largely a social and personal manifestation of underlying personal, interpersonal and social problems, and legislation of this type must necessarily be limited in its social effectiveness. Nonetheless, it is apparent that legislation is required which will make possible some control over illusinogenic drug abuse, emphasize to the public the present state of relevant knowledge and concerns, and permit and promote responsible ongoing professional investigation. Misuse of LSD is particularly difficult to control as the drug is colourless, tasteless, odorless, readily soluble, inexpensive, easy to prepare and convey and difficult to detect. In spite of these limitations, Bill S-21 is an appropriate attempt to deal with a relatively new, but very real problem, in a relatively constructive manner; as such, it should be supported.

Bill S-21 is designed to deal with LSD—one member of a group of drugs now recognized as being sufficiently different from previously considered classes of drugs to have specific characteristics, new problems

and possibly new values. LSD may have value in medical treatment, and in medical and physiologic basic science and clinical research. The general class of illusinogenic drugs is marked by their "habit-forming" rather than "addiction-producing" tendencies and their tendency, in commonly used doses, to produce or precipitate illusory distortions. These are delusional misinterpretations of sensory stimuli. Such perceptual delusions may reach the extent of hallucinations, that is, they may occur with no external stimulus at all. The distortions tend to have a realistic quality and may be acted on during, and even after, the period of identified drug action.

As dozens of such drugs are now available, and many have recently been in street use, it would seem worth while to generalize Schedule J to include illusinogenic drugs in general, and at least the more recently available ones in specific. This would have the advantage of providing ready access to legislative control of newer members of this class of drugs as they become available and identified; there is every reason to believe that new drugs of this group will become quickly available, as has already been happening. Some of the specific drugs which are known and have been in street use and should be included in Schedule J are: LSD, DET, DMT, mescaline, peyote, psilocybine, DOM ("STP") and cannabis compounds, natural and synthetic, including marijuana, hashish and THC.

In support of Bill S-21, it should also be noted that the provision for exemption by Governor in Council in section 45 (3) would likely permit the continuance of responsible, controlled research as is the case at present with regard to LSD.

The Chairman: Doctor, I understand that there may be some suggestion in connection with Schedule J of adding to the words lysergic acid diethylamide "or any salt thereof". Have you any comment on that?

Dr. Solursh: The question has been raised already on the street that LSD may become available or may be available now in forms other than LSD-25 and it would seem appropriate to me to add this kind of addition.

Senator Pearson: In this second paragraph of your brief you say "In addition, there is good reason to believe, from contact with the street situation, that many unpleasant, frightening and dangerous experiences, which are

not brought to medical attention do occur quite frequently." Is this just a suspicion on your part or do you know definitely that there is a problem of this nature on the street?

Dr. Solursh: I am referring there to my own contact both in the office and in the emergency department and in the community with people who have used LSD or drugs like this on the street. Some will say when asked that they have known of many "trips", none of which has been unpleasant, but an equally large number, at least, will say that they have known of a good many "trips" amongst their friends which have been very frightening, and which were rather complicated and which were treated by themselves in the street situation.

Senator Pearson: What do you mean by "frightening"?

Dr. Solursh: The so-called "freak-out" is often accompanied by intense panic with loss of control coupled with delusions and panic and fear of institutions which may be offering help.

The Chairman: Have you any comment on this, Dr. Baker?

Dr. Baker: The street users in their panic and in their distortions often land in hospital and in one's office and it is quite evident that there is an increasing number landing at the Toronto Western Hospital at any rate.

At the Toronto Western Hospital we are a little bit close to the "hippy" region in Toronto.

Senator Molson: Mr. Chairman, since we met last there has been an item in the paper which said that the University of Iowa paediatricians say they have encountered their first case of a baby born with birth defects because her mother had taken LSD. I wonder if Dr. Baker would comment on that, because at the last session we had a witness who said that there had been no irreversible changes recorded because of the use of LSD.

Dr. Baker: Yes. We know that in rats you produce bad litters if you give them LSD early in the pregnancy. We think that is true in humans too. You cannot really say it is shown that the deformity was due to LSD or anything else based on a sporadic case, but there are deformed babies born, starting to show up here and there, in cases where the

mother had taken these hallucinogenic drugs during the pregnancy.

Senator Croll: Could you tell us how they affected me? I like morning glory seeds, and always did, as a kid. Do you think I was affected by them?

Senator MacKenzie: This explains a great deal!

Senator Molson: Perhaps you had better rephrase that, senator!

The Chairman: I will give you two seconds to rephrase the question, senator!

Senator Croll: No, that is the way I wanted it. Doctor, we all did as kids.

Dr. Baker: The case I have in mind ate five packages of the commercial morning glory seeds and had 12 hours of seeing things and being in danger. No one should walk on the street with the flood of sensation this drug brings. I did not give it to her, but I think this particular girl is telling me the truth. That is quite a few seeds. You have to work at it.

The Chairman: Any other questions?

Senator MacKenzie: Any more confessions?

Senator Molson: I gather from what Dr. Solursh said, he had, and is having, wide experience with adolescents, and this seems to be the age group we are all most concerned with. Would you suggest to us, doctor, that its use is growing amongst adolescents, and would you suggest perhaps the age group is changing? Is it getting any younger, or could you tell us a little more of your experience with the adolescent sector of society?

Dr. Solursh: Yes, sir. I would suggest my experience points to more widespread use, an increasingly widespread use of drugs of this type, LSD included, in age groups and social groups in geographic areas other than heretofore. In this sense the age range is dropping, particularly with regard to marijuana, and it is dropping to the 12-13-year-old range. To some degree this is true of LSD. A number of people we have identified as hippies have almost stopped the use of LSD and drugs of this kind, and we are now seeing more use of these drugs in suburban areas and a spread, I would think, to a younger age group as well, particularly a move down in age.

Senator Molson: Would this be because the younger ones perhaps thought it was fashionable following the hippies, and now the hippies have become a little more experienced and wiser?

Dr. Solursh: There is a great deal of truth in this. The younger groups involved in it identify with the hippy phenomenon. This is a group often referred to as teeny-boppers.

The Chairman: Teeny what?

Dr. Solursh: Teeny-boppers. At times, I may say, they have out-hipped the hippies. We are seeing quite a process of rebellion. Marijuana, aside from an attempted solution to problems and aside from the culture we are living in, has become a very powerful political weapon in the hands of the younger children, and LSD has, to some degree.

Senator Croll: A "political" weapon?

Senator MacKenzie: Yes, against their parents.

Dr. Solursh: Very much so. In terms of the political weapon point, I recently participated in a panel discussion in Toronto, and a 13-year-old girl was good enough to get up there and participate. She pointed out there was a degree of, at least, marijuana use in the school to which she went in Toronto, and that most of the children in this junior high school were quite aware of it, whether they were using it or not. The political eruption that subsequently occurred in the school and the degree of pressure on her not to say anything about it is almost unbelievable.

On the other side of it, taking it, they consciously see this as a way of threatening adult society, so-called "straight" society. That is something, they feel, will concern us and threaten us quite a bit.

Another brief case. I have recently become aware of one family in Canada that was recently admitted to treatment as a whole—mother, father and teen-aged daughter. And, perhaps I may say, they "freaked out" on LSD they took together. We are encountering more and more use of this kind, more than one person in the family, in answer to Senator Molson's question before.

Senator Croll: Would you care to help me in another way. Would you define a "hippy" for me, please?

Dr. Solursh: From whose viewpoint? This is difficult. The hippy will not define himself.

Senator Croll: Yes, but you speak of him. You must know.

Dr. Solursh: I speak of this as a social phenomenon that we in non-hippy society have identified and labelled. The hippy is, therefore, by definition someone who is part of a group, the members of which are working through their problems of alienation from society and institutions by living in a particular sub-culture, a sub-culture marked by group activities, a good deal of individual decision, rebellious change in clothing, hair and other personal appearance and habits, and communal drug use. It is, therefore, marked by the phenomena of the dropout, the "turning on" and the "tuning in." Many people who have been part of this sub-culture have subsequently graduated from it or matured through it, as Senator Molson suggested, and have returned to conventional society—some I know in a pretty constructive and adaptive way.

Senator Croll: I think you also suggested to the Chairman there is a junior edition of this?

Dr. Solursh: Yes, I mentioned the teeny-boppers.

The Chairman: Yes, the teeny-boppers.

Senator Croll: I just wanted to make sure the Chairman understood, he being so far removed from this.

The Chairman: It is good to have the lingo.

Dr. Solursh: This is the commonly used phrase to describe the young teenager. It is not particularly a parallel word to the hippy phenomenon, but it is the younger group, including many children who have learned some lessons from the hippy group to whom we have referred. They either use drugs or talk about them—and more often talk about them than use them. They are pretty acutely aware of the social setting and relevance of drugs to this institution and its setting. They are, in many ways, copying the hippy phenomenon by wandering into geographic areas such as Yorkville or becoming "angry" at institutions. They are picking up the hippy ideas and are utilizing them as a younger group.

The Chairman: Has the word derived from "hypnotic"?

Dr. Solursh: I did look through Webster, which is one of my favourite pieces of bed-

time reading, and the closest I could find was "hypo", and "hippy", defined as coming from "hypo," meaning "down in mood", in effect. This is not an inappropriate comparison to make.

Senator Pearson: Is it an urban disease or spread out into the smaller areas?

Dr. Solursh: It is largely an urban or semi-urban problem, but this includes smaller urban areas such as Orillia and other towns than just Toronto, Montreal or Vancouver.

The Chairman: Any other questions?

Senator Sullivan: Dr. Solursh is speaking in Boston next May before the American Psychiatric Society. There is a pre-publication paper on hallucinogenic drug abuse which he was kind enough to let me have. We have some new terminology in that paper and I was wondering if, particularly for the benefit of the Department of Health, it would not be a good idea for him to elucidate on these terms before this committee, probably not in detail because it is quite long, but perhaps he could ask that it be put in the record, if that meets with your approval, Mr. Chairman.

Dr. Solursh: I wonder if you could give me a guide as to just what you mean? I can read some of the terms included in the paper. I would suggest to the honourable senators that these terms are typical in that any subgroup, drug culture or otherwise, tends to develop its own terminology as a common manifestation of sub-group existence or identity. Some terms indicate something about the attitudes of the people who have devised and used them. These are terms in common use, some of which you have heard.

"Acid" means LSD.

"Ball" means to have sexual intercourse.

"To blow one's mind" means to break with one's personal reality.

"A bummer" is an unpleasant drug experience.

To be "burned" is to have purchased or used an ineffective drug.

"To come down" is to perceive the ending of drug activity.

"To go up" is, naturally, to perceive the onset of drug activity.

"To come on to" is to approach a person.

"To control" is the capacity to deal effectively with an hallucinogenic or illusinogenic drug experience.

"To cool" is to handle life situations in an adequate manner.

"Cool" as a noun is trust. "Cool with the RCMP" means one has a good deal of established trust from them.

"To cop" is to purchase or acquire, as one might "cop a dime bag."

"Dime bag" is \$10 worth of marijuana.

"To crash" is to go to bed.

"To do the thing" is to engage in a specific act.

"To freak out" is to feel loss of control over thought processes and have an unfavourable hallucinogenic drug experience.

"Grass" is marijuana.

"Pot" is marijuana.

"Jay" is a marijuana cigarette, or "joint" as an alternative.

"Ki" or "kilo" is a kilogram of marijuana.

"To lay on" is to give.

"To lay on" something to someone is to give that to them.

"The man" means police, a policeman.

"Paranoid" is a loosely used term to denote acute generalized anxiety or specific fearfulness.

"Playing mind games" is attempting to occasion emotional disruption by intent or by unnecessary questioning.

"To shoot" or "shoot up" is to inject intramuscularly or intravenously.

"To smoke" is to use marijuana or hashish.

"Speed" is any stimulant.

"Speed freak" is an abuser of stimulants.

"Straight" is someone who is not a drug user.

"To put on" someone is to deceive, with humorous or absurd intent.

"To turn around" is radically to alter one's own or another's perspective.

"To turn on" really means to involve one's self or another with a sensory experience, not necessarily by means of drugs.

There are some others; I have not given them all.

Senator Sullivan: Is not "speed" the nickname for STP?

Dr. Solursh: No. "Speed" means really any stimulant, usually referring to "meth", "desoxy", "preludin" or "amphetamines". It is a broad group which speeds one's thought processes.

The Chairman: They might call it an accelerator.

Dr. Solursh: We might call it an accelerator, sir.

The Chairman: Dr. Sullivan, I understand you had something to add.

Senator Sullivan: I was sick and unable to attend the November 22nd meeting of the committee when it last dealt with this subject. However, immediately after reading the evidence I checked with Professor Hunter, head of the Department of Psychiatry of the Faculty of Medicine of the University of Toronto and, in view of the evidence given by Dr. Myron Arons and Dr. John H. Perry-Hooker, who appeared before the committee at that time, Professor Hunter suggested that we should get two qualified men in this field today to appear before us. For the record I wish to put forward what Professor Hunter said in regard to those previous witnesses to whom I have referred. It is this:

No one I have been able to contact amongst psychologists or psychiatrists have ever heard of Dr. Arons or Dr. Perry-Hooker. I am having the literature searched for references to publications by either of these two gentlemen. To date I have not any scientific publications that they have produced.

Dr. Arons testimony appears to go beyond a rational support of his ideas concerning LSD and to become rather emotional. I wonder why? Also, his point about irreversible effects appears to me to be a tenuous one. Quite clearly there are possible side effects which are highly undesirable, and which in all likelihood cannot be predicted accurately. Furthermore, his statement on page 9 that there has been no deformed children out of the hundreds of thousands of these people who have taken LSD is open to serious question.

We have further information that Dr. Arons studied under the psychedelic high priest, Dr. Timothy Leary, himself.

Both our medical experts here today were co-authors of the book to which Senator Molson referred a couple of weeks ago, and the committee are deeply indebted to these men for the evidence they have given us today.

The Chairman: Dr. Hardman, have you anything you want to add now?

Dr. A. C. Hardman, Director, Bureau of Scientific Advisory Services: No. I should just like to make a comment with respect to the schedule. The schedule has to be set up in a form which deals with specific chemicals or salts; it cannot take in a group of drugs, as suggested by one of the witnesses.

We are aware of some 35 hallucinogenic agents, but rather than discuss them both here and in other committees we felt that the ones most abused could well be discussed, otherwise we would be getting into details of some 35 different agents. As honourable senators are aware, the department will put up the arguments for putting these other agents in the schedule to the Governor in Council in due course, and they will consider adding them to the schedule.

The Chairman: What have you to say about the suggestion that it was proposed to add the words "or any fault thereof" to what you now have in Schedule J?

Dr. Hardman: This suggestion came out of the Dominion Council on Health, and resulted from an attempted prosecution in Alberta, I understand. The problem there was one of terminology which the analyst used. He expressed his findings in terms of salts, and I believe the judge found that the salt was not a drug. If honourable senators feel that they should amend it to add "salts" we would welcome such an amendment. However, it is not necessary if we instruct our analysts to express it in terms of potency of LSD.

I will bow to my legal confrere here on this point, but from the scientific viewpoint we can only do it as an interim measure.

The Chairman: But, Doctor Hardman, you appreciate that now that there has been this public discussion—

Dr. Hardman: Right.

The Chairman: And when any certificate is presented, it just describes the drug. You are going to find, right away, cross examination. Is this the—

Dr. Hardman: From a scientific viewpoint, we would welcome it being amended to "LSD and salts."

The Chairman: Mr. Curran, have you any comment?

Mr. Curran: I agree with Dr. Hardman. This point came up a few weeks ago at the Dominion Council of Health meeting, and the Deputy Minister of Alberta pointed out that

they had one to cover it, and Alberta in their legislation possibly had an act.

They suggested that perhaps it would be wise to add "and salts" to cover that eventuality.

The Chairman: I mean, with your legal background, would you agree that it would be a wise thing to do?

Mr. Curran: I think it would be a wise amendment.

The Chairman: Prosecution, under what, in Alberta?

Mr. Curran: In British Columbia and in Alberta, they have provincial legislation. They have a statute in Alberta and one in British Columbia, which states that the possession of LSD is an offence—and that is to anticipate the bill which is here now, which will make possession of LSD an offence.

In provincial law this is an offence now, and that is where they run into trouble, as they cannot prosecute someone for being in possession of LSD and in relation to "salts" and LSD. There is legislation in the two provinces that makes it an offence to be in possession of LSD.

Senator Croll: Had we not better look at these bills—they are new to me, has anyone seen them?

The Chairman: Have you seen them?

Mr. Hopkins: No.

The Chairman: This being federal legislation, it would govern the field.

Senator Croll: I appreciate that, but how are they trying to reach it? They had a problem in British Columbia, I do not know about Alberta, and if they had put their minds to it and looked at their problem, perhaps we should look at their problem too?

The Chairman: Mr. Curran, you are familiar with provincial legislation. Does our bill, that we have before us, parallel what those two provinces have done?

Mr. Curran: Our bill, substantially—the penalties may be different—but apparently the bill covers the same situation they have tried to cover in British Columbia and Alberta. Both provinces found that, if federal legislation in this field were passed—theirs was passed before this bill was introduced—

with the full knowledge that, if federal legislation were enacted, theirs would not be necessary, as ours would become paramount.

Senator Croll: Was theirs challenged on constitutional grounds?

Mr. Curran: I believe there have been no constitutional challenges as yet, but they are fully aware that there is a possibility that, this being under the criminal law, it will probably be challenged.

Senator Thorvaldson: I still want to ask Mr. Curran whether this legislation would still supersede provincial legislation; and I take it that this is the theory—that we have made this federal jurisdiction under this act...

Mr. Curran: The federal legislation will become what we call paramount legislation and will supersede the provincial legislation covering the same area.

Senator Smith (Queens-Shelburne): I wonder if Mr. Curran could say, what is the difference between the penalties proposed in our bill and the penalties under provincial legislation that he has mentioned?

Mr. Curran: I do not have the provincial legislation before me, but I understand that there is a fine of \$1,000 under the Alberta Act, according to my recollection. I do not know about British Columbia, but there is a slight difference.

Senator Thorvaldson: The position is now that, without legislation from the federal parliament, the provinces have jurisdiction over this? Is that correct or not?

Mr. Curran: I am not at all sure. The question of challenge has been coming along. They would have to justify "property" within civil rights. I think you are fully aware that there is a possibility of challenge. But, in the absence of federal legislation, it might have a better chance of standing up. Once federal legislation has been enacted, then obviously ours becomes paramount.

Senator Molson: In order that the record of our proceedings follows through on a logical basis, I would like to ask Dr. Baker and Dr. Solursh one or two specific questions. They relate to what happened two weeks ago in the evidence before the committee. Could it be said that they are in favour of control of the indiscriminate use of LSD? That is the first question.

The Chairman: Shall we get an answer?

Dr. Baker: Absolutely yes.

Senator Molson: Do they feel that care must be taken to provide the means of continuing research in LSD?

Dr. Solursh: Emphatically, yes.

Senator Molson: Do they think that any special provision should be made in this bill, in order not to curtail research or clinical use, by properly authorized medical people, of LSD?

Dr. Baker: As I read it, the provisions are there for exceptions to be made for properly constituted institutions to continue research, and I feel those should be used.

Senator Molson: Do you think they are adequate?

Dr. Baker: I do, sir, yes.

Dr. Solursh: If I may, sir, our experience with the present situation regarding LSD is that the Food and Drug Section have been most co-operative in permitting and supporting all research which has been submitted to them and approved by them. We have had no real difficulty at all in the case of university institutions.

I feel an inherent concern about legislation, because once it is in black and white it is a little harder to alter. And although I have—and I mean this most sincerely—although I have the utmost confidence in the intent of this bill, and in the present utilization of it by the Food and Drug directorate, I think I would naturally be happier seeing in the bill specific direction of this kind. How it would be worded, I do not begin to know.

The Chairman: It may be that the problem of wording is the reason why we have to learn a little more about it, before we try to provide some wording? Would you admit that?

Dr. Solursh: The problem of wording in regard to research—the problem of wording would benefit from the facts that arise from that research.

The Chairman: So it may be a little early to try to particularize?

Dr. Solursh: It may be, indeed, sir.

The Chairman: Are there any other questions?

Dr. Hardman: Perhaps still, in answer to the point that has been made, the use of "salts".

At the present time, LSD is provided under the Food and Drugs Act, in regard to research by institutions, for certain work therein.

We have also drafted regulations which would parallel the present situation, and these have been submitted to the Department of Justice, the intent being that these regulations will be brought into force with the legislation coming into force; and the regulations would permit of the sale of LSD to approved institutions for clinical research in the institution, in terms of safety and so forth. So you can be assured that steps have already been taken which will guarantee the continuance of research availability of this and other restricted drugs, under those circumstances.

The Chairman: Do I understand from what you say, that when these regulations come into force, an approved institution will only have to present the request for the drug, to carry on or to continue some research?

It will not have to submit in detail the nature of the research under which the Food and Drug Division would then check the merit, in their view, before they would grant the request?

Mr. Curran: I assume Dr. Hardman would answer that.

Dr. Hardman: Sir, no. Not quite. The person or institution that is carrying out research will be granted additional material to continue this research. But a new institution, such as was represented by one of the witnesses here two weeks ago, will still have to submit the protocol for review.

In other words, any new research would be examined not by ourselves but by a committee of the Canadian Psychiatric Association, with whom we work, for the merits of the research. I think, if I could recommend it to the committee, we should be permitted to continue in this way, otherwise we would have a number of small institutions of inadequate medical controls wanting to engage in this area.

The Chairman: Yes.

Dr. Hardman: But I do assure both doctors here that, if research is in progress, additional supplies under the same protocol are made

available without additional information on the form.

Senator Thorvaldson: I wonder, Mr. Curran, if in your opinion the legislation is broad enough or if there is a specific term in the legislation which will authorize regulations to allow the Governor in Council to distribute LSD to institutions? Or should there be an amendment to clarify this and make it clear? I looked for it, but I could not find the authority.

Mr. Curran: Section 40, subsection (1), it says:

Except as authorized by this Part or the regulations, no person shall have a restricted drug in his possession.

In other words, the regulations will authorize the circumstances under which a person may have a restricted drug in his possession. That is the authority.

Senator Thorvaldson: "Except as authorized by this Part or the regulations". You feel that that is sufficient authority for distribution to be made to research institutions? You see, there is not a specific statement there, is there?

Mr. Curran: If you look at section 45, which adopts by reference the provisions of sections 36 and 37 of Part III of the Food and Drugs Act, which set out the circumstances giving the Governor in Council authority to prescribe circumstances under which a person may have possession of a control drug, you will see that by reference those are adopted for this purpose here. Rather than repeat all of the sections, they have been simply adopted by reference. There is a clear authority in the regulations to prescribe the circumstances and conditions of possession which would be authorized possession.

Senator Thorvaldson: That answers my question.

Senator Pearson: Who has authority to manufacture this substance and supply it to these people?

Dr. Hardman: Under the new drug regulations only one company, Sandoz of Switzerland, is permitted to manufacture the drug for sale in Canada and for distribution as an investigational drug. Its agent in Canada is the Connaught Laboratories. The company wishes to disassociate itself from the clinical investigation, so that there is one legal supplier and one agent, the department having

arranged with the Connaught Laboratories to take this on in order to ensure that there would be a continuity of supply for investigators.

The Chairman: And to see to the purity of the drug.

Dr. Hardman: This, of course, is our prime concern.

The Chairman: Are you ready to deal with the suggestion that we add to Schedule J, after the words "lysergic acid diethylamide", the additional words "any salt thereof"?

Senator Leonard: I just wonder about the wording. I am not a good enough chemist to be sure about it, but I take it that LSD is an acid. Does "a salt thereof" mean the acid is changed into a salt form or is made into LSD or does it mean that LSD is in combination with some other chemical in order to make an LSD salt?

Dr. Baker: Well, a chemist could correct me, but it means LSD connected with another substance to make a salt.

Senator Leonard: Then should it be "any salt containing LSD"?

Dr. Baker: Perhaps that would cover it also.

Senator Leonard: The word "thereof" is correct, I suppose, but it suggests to me that you are still talking about LSD itself, not LSD in combination with something else.

The Chairman: Have you any comment about that, Dr. Hardman?

Dr. Hardman: We do have this under the control drug regulations, and it has stood up. It is usually a metallic salt, that is, a sodium salt.

Senator Leonard: So it would be any salt thereof?

Dr. Hardman: Yes, and it has stood up.

Senator Thorvaldson: Mr. Chairman, I take it, then, that the officials of the department want this amendment. I do not think we should put in an amendment of this kind in such a technical subject unless the officials tell us definitely that they want it because they think it is useful.

Dr. Hardman: We would be happy to have this committee move the amendment. Yes, sir, we would like it.

The Chairman: In other words, it would be helpful to have that addition?

Dr. Hardman: Yes.

The Chairman: With that evidence, are you prepared to approve the amendment to Schedule J by adding the words "any salt thereof"?

Hon. Senators: Agreed.

The Chairman: Before we adjourned our considerations on the last day, a suggested amendment was distributed. I have had a good look at it since. I think the thought behind it was that there should be some prohibition against advocating by word or deed or by any other means of publication or communication whatsoever the use of a restricted drug, whether by unauthorized possession or possession for trafficking or trafficking.

I pointed out last time that the Criminal Code does provide certain methods for dealing with situations. For instance, aiding and abetting is an offence under the Criminal Code, but it is aiding and abetting some person. Counselling is an offence under the Criminal Code so that if somebody counsels somebody else by word or deed or other means to use or to have in his possession a restricted drug, and his possession is not authorized possession, then the Code section on counselling would define the charge. There is also a provision in the Code for attempting, in addition to the doing of the thing.

So you have those various situations covered, but the one situation you do not appear to have covered is the situation of advocating. That is, advocating in the sense that you are not urging a particular person but are advocating more generally the use of a restricted drug, whether by unauthorized possession, possession for trafficking or trafficking.

This was the purport of the amendment which was distributed last time, and it did have in it the words "no person shall teach or advocate". My own view, for what it is worth, is that the word "teach" involves too many angles to add anything to what we are really aiming to do, and I think the word "advocate" is a more significant word.

In dealing with possession in this draft amendment we did not have the words "unauthorized possession". We have been discussing today a possession which is perfectly legal; that is, when the Food and Drugs Division permit genuine researchers to buy the drug and to use it in experimentation. So the

only suggestion I would have, if the committee is going to consider this amendment, would be that it be limited to "advocating" and that the word "unauthorized" be used to describe the kind of possession that is prohibitive.

Senator McCutcheon: Surely, if such an amendment were passed, it would mean that no person could even advocate the repealing of this bill.

The Chairman: Well, it would depend upon the advocacy. The amendment says that no one shall advocate by word, deed or any other means whatsoever the use of a restricted drug, whether by unauthorized possession, et cetera.

Senator Thorvaldson: Mr. Chairman, may I just ask a question.

The Chairman: Just let me finish, please. It then goes on to include the aspect where such word, deed, publication or communication is reasonably or ordinarily calculated or likely to lead, encourage or induce anyone so to use a restricted drug. So that answers your question. If you advocate the repeal of the bill, you are not in violation of this section.

Senator McCutcheon: I do not like that type of section. It seems to me that it is far too broad.

The Chairman: There is some merit in what you say.

Senator Thorvaldson: Mr. Chairman, that is just what I wanted to talk about. I was wondering if this proposed amendment had been submitted to Mr. Curran for his judgment or broadness of it. I wonder whether he would care to comment on the effect of it, and also if it should not be discussed with Dr. Hardman in order to get his views of it, as well as with other officials of the department, because this is still a technical matter.

The Chairman: I can tell you, senator, that the draft was submitted to these gentlemen and discussion was attempted in relation to it, but no comment could be provoked. As a matter of fact the implication was that the bill in the form in which it was before us represented government policy in the matter, and I won't go so far as to say that they said "Don't harm one single hair on this child's head," but it almost got to that stage.

Senator Thorvaldson: I find it somewhat difficult to decide where a bill is of a techni-

cal nature, as this one is, and is brought to us by the officials of the department who have given it a great deal of thought from both a practical and legal point of view whether it is for us to proceed to amend it, or whether it is wise for us to amend it unless they approve of the amendment and believe it will serve a purpose.

The Chairman: Well, Dr. Hardman, maybe I can get something here in committee that I could not get outside committee. In connection with the administration of this bill, and when it becomes law, if in fact there is no amendment to prohibit the advocacy or the advocating of the use as set out in terms of the amendment, are you lacking in any authority to achieve the purpose of this bill?

Dr. Hardman: The original purpose of the bill as constituted was to control the illicit trafficking, and the proposed suggestion of Senator Molson introduces a new parameter, and I would like to defer to the deputy minister on this matter so that he might give the departmental position on this.

Dr. J. N. Crawford, Deputy Minister (National Health), Department of National Health and Welfare: Mr. Chairman, I would like to call your mind to the fact that in the schedule to the Narcotics Control Act, possession of narcotics is an offence. I suppose we could have very simply placed possession of LSD within this schedule, but there were two reasons why we did not. First, LSD is not a narcotic, properly speaking, and, secondly, the penalties for the possession of narcotics seem more severe than those warranted for the possession of LSD. I say this because the latter is mainly in the hands of curious young people and so is in a very different situation from the possession of narcotics. Therefore we felt that we should have another Act, another means of controlling possession of things that we call restrictive drugs, and the example which is before us is LSD and salts thereof. There may be other drugs added to the schedule, and no doubt there will be as experience warrants it. But the intent of the act was very simple: it was to make possession of LSD an offence.

The amendment which is proposed adds a completely new dimension to this. If I may paraphrase the intent, it is to prevent the preaching of the gospel of LSD. But, as I say, it does add a new dimension to the bill and it is not what the bill was originally intended to do. It obviously adds tremendously to the administrative difficulties of the bill, since possession is a black or white situation in

that you either have it or you don't. But the moment we get into trying to administer the amendment, we are getting into the question of individual judgments, and at times widely differing judgments. The upshot of all this is that everything I have said so far is merely preliminary to saying nothing. Of course, honourable senators are certainly going to do what they think is right with respect to this amendment, but I have had no instructions to depart from the original intent of the bill which was to make possession an offence. Having said that I am obviously quite unable to make any comment on the content of the amendment. Thank you.

The Chairman: Senator Molson, have you anything to say to this?

Senator Molson: I think I would like to ask the deputy minister if the reason we have an LSD problem is not perhaps because there have been people preaching the gospel. As far as I know and from the little reading I have done, LSD did not seem to be very widely known until some people like Dr. Leary made it extremely well known. They set a fashion and they started a cult. If you are trying to control a substance such as LSD, and while you and the law enforcement agencies are chasing around trying to prove possession and on the next street corner somebody is standing up holding a meeting and saying "Get with it" and "Tune on" and using some of the other terms with which we have recently become familiar, do you think the legislation then is as helpful as it might be if that sort of person were limited in his activity?

Dr. Crawford: I think, sir, it would be a highly desirable state of affairs if people like the high priests of this cult would go away. It would make life much simpler for us and for people who do not approve or the indiscriminate use of LSD. To that extent I would agree that your ideas are indeed very valid.

Senator Molson: Well, doctor, will you answer the first part of my question? Is it a fact that LSD did not become a problem until it was advocated by certain people who became very prominent and well known?

Dr. Crawford: The problem of LSD really started, I think, long before Leary and his people, but it was a relatively small problem. LSD was produced, but not in the way it is now being produced, and its use was not magnified to the present alarming proportions which resulted from the cult.

Senator MacKenzie: Mr. Chairman, from the basis of my own experience it seems to me that the use of LSD is more prevalent among young people, and young people are very impressionable to propaganda, if you like to call it that, particularly if it is against the Establishment. I am inclined to agree that despite the difficulties that Senator Molson's proposal would entail, it would be useful in dealing with the younger elements in our community and society in that they would have less interest in or concern with using these materials. I would like to hear from one of the witnesses here who has had some experience in this field.

Dr. Solursh: Well, Mr. Chairman, Dr. Leary, is a psychologist. Leary is not viewed with much respect by most of the young people who are taking LSD either sporadically or frequently. But there has been, as has been suggested by Senator Molson, an upsurge in use and a temporal coincidence between the coming of Leary and the use of LSD; whether it is a causative coincidence or not is another matter. I wonder if I might ask a question, if this is appropriate.

The Chairman: Well, it is all right to ask the question.

Dr. Solursh: How do you propose to control radio, television and newspapers from the United States of America?

Senator McCutcheon: That is one of the difficulties of that kind of legislation.

Dr. Solursh: To me, as a psychiatrist, the answer is that we in medicine must become more involved and be more prepared to be publicly involved in disseminating information such as we are aware of, and in being as accurate and honest as we possibly can. This is the way to fight that kind of problem.

Senator MacKenzie: You want a positive rather than a negative program?

Dr. Solursh: Yes. I think the honourable Senator Croll spoke about impressionability and rebellion against institutions. This is the very reason why, if this kind of amendment were passed, a number of young people would rebel and say, "Why are you stopping us from gaining another person's opinion?" I think the intention is honest, but how it would be effective in the minds, more of youngsters, that is another matter. It is educational rather than legislative action I think we need, and I, for one, am prepared to

become involved in this, and I think many others of us are too.

The Chairman: Senator Molson, do you wish to put forward the motion in amendment as distributed the last day?

Senator Molson: Whatever the committee wishes. This is a suggestion; it was not a crusade. I do not think I was entirely alone in the thought this was one of the bad effects of this LSD problem.

The Chairman: I can say right away that you were not alone, because I shared the view you had.

May I read what the amendment proposes? And then, rather than have a formal vote and say we turned down such a suggestion as this, we might just say we considered it and left it for the consideration of the Food and Drug administration—if that is your view—rather than have a formal vote? May I read the amendment?

Senator Thorvaldson: Before you read the amendment, Mr. Chairman, I would like to express a personal view on the matter of the amendment. I was on the committee, but I was not available at the time you met, but I would like to express my opinion now.

I am very skeptical of anything that interferes with civil liberties or freedom of speech in any way, unless there is a very strong case made in favour of it. I find it difficult to believe a strong case has been made out for this amendment yet. I would very strongly urge that we wait for a year and see what happens in this LSD situation. Then, if in another year's time it becomes apparent that something more is needed, I would say we should consider an amendment at that stage.

There is another reason I talked in this fashion, and it is that very shortly we are going to have before us in the Senate another bill which involves civil liberties, and that is the so-called bill in regard to "hate literature." We are going to be discussing very seriously the question really involved in that bill, and the arguments are going to be, to a large extent, similar at least to the matter involved in this amendment, and I would not like to see us at this time set a precedent such as this, at the very moment when we are entering on this argument in regard to "hate literature."

The Chairman: You appreciate the exception in the proposed amendment is that:

...this prohibition shall not apply to the publication of a report or to fair com-

ment on any such word, deed, publication, or communication.

So, this does not prohibit the publication of what might be an advocacy, but it must be fair comment and not distortion which very ordinarily comes in. When you are advocating something, there is an inclination to overlay it with words which go beyond the stage of fair comment.

Senator Croll: Mr. Chairman, Senator Sullivan brought before us two people today. Frankly, I was very dissatisfied with the witnesses who were here last time, and I make no comment on it, although I had intended to raise the question.

We have the deputy minister here, of long experience in the department, who says, in effect, "Leave it alone." The young man, the younger doctor, who impressed me very much this morning, has very boldly and very courageously appeared before the Senate committee and has said, "I think perhaps you people are on the wrong track at this time. Leave it alone." In the light of the evidence of these two individuals, who have far more knowledge on the subject than we, should not we avoid getting into deep water? Senator Molson said it was not a crusade, but a thought; it was a very good thought, and if he had not brought it up we would not have heard these other witnesses at all; and, to that extent, it was a great advantage to the committee and the country generally who read about this.

We are in a new field. Put it on the record, and leave it there for the time being; stay with the bill, and then we will have done our duty.

The Chairman: This committee set up a small subcommittee to put in some kind of language the thoughts of the committee at that time on the question of advocating or promoting. The subcommittee has done that, and has brought this amendment back to the main committee. What I think is that the language of what we have brought back should go into the record of our proceedings; and, certainly, there should be a specific direction to those charged with the administration of this act as to what our thinking is in this area, those who advocate the use of a restricted drug, which is being covered by this amendment. It is open to the committee, of course, to decide if they do not want to go that far at this time.

I would rather see the committee take that position, than submit the amendment and

have them vote it down, because I think there is a lot of worth and value in the amendment and it should not receive such arbitrary treatment as that, because some day you may be doing that.

Senator Croll: The point is not voting it down. Senator Thorvaldson and myself are against the amendment, and maybe others, and we would start a completely new debate here and in our house, and it would reach over into the other place, and then we would have started something you could not foresee an end to. That would not be in the general interest, because we are trying to do something specifically and now, and have it made acceptable in the other place.

The Chairman: We can spend a great deal of time bandying words back and forth. Is it the wish of the committee regarding this amendment in draft form submitted by the subcommittee to this committee, that consideration of it, beyond what we have done, be deferred and that the Food and Drug Division be asked to give further consideration to it?

Senator Croll: I think that is eminently correct.

The Chairman: Senator Molson, are you satisfied if we proceed in that way?

Senator Pouliot: Mr. Chairman, could I ask you two questions?

The Chairman: Three, if you like.

Senator Pouliot: No, only two.

The Chairman: All right, two.

Senator Pouliot: Mr. Chairman, in your opinion, is this bill controversial?

The Chairman: No.

Senator Pouliot: It is not controversial?

The Chairman: I do not think so. Wait! I should say the people who are affected, the hippies, yes, I think they might controvert what this bill intends to do; but, for the general public, I would say it is not controversial.

Senator Pouliot: It is not controversial?

The Chairman: No.

Senator Pouliot: And is it urgent to pass it?

The Chairman: Yes.

Senator Croll: I move that we file the document with our records, and that we bring it to the attention of the appropriate department involved, for their consideration.

Senator Leonard: Mr. Chairman, I agree with your suggestion but I should like to add a rider to the effect that a year from now, even if we take no legislative action, we ask the minister to report back to the chairman of this committee and say whether there is any suggestion from the department with respect to this amendment.

The Chairman: Is this the way the committee would like to deal with this particular subject matter?

Senator Leonard: In other words, I do not wish it to be left completely in the air.

Senator Thorvaldson: And I do think, Mr. Chairman, that we should record the amendment in our minutes, so that it can be referred to next year.

The Chairman: Is that the view of the committee?

(Text of Amendment follows)

"47. (1) No one shall advocate by word or deed or any other means of publication or communication whatsoever the use of a restricted drug, whether by unauthorized possession, possession for trafficking or trafficking, where such word, deed, publication, or communication is reasonably and ordinarily calculated or likely to lead, encourage or induce anyone so to use a restricted drug; but this prohibition shall not apply to the publication of a report or to fair comment on any such word, deed, publication, or communication.

(2) Every person who violates subsection (1) is guilty of an offence and is liable

(a) upon summary conviction for a first offence to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment, and for a subsequent offence, to a fine of two thousand dollars or to imprisonment for one year or to both fine and imprisonment; or

(b) upon conviction on indictment, to a fine of five thousand dollars or to imprisonment for three years or to both fine and imprisonment."

Hon. Senators: Agreed.

The Chairman: Then, subject to that, shall I report the bill as amended?

Hon. Senators: Agreed.

The Committee concluded its consideration of the Bill.



Second Session—Twenty-seventh Parliament
1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 18

Complete Proceedings on Bill S-23,
intituled:

"An Act to amend the Currency, Mint and Exchange Fund Act
and the Criminal Code".

WEDNESDAY, DECEMBER 6th, 1967

WITNESSES:

Royal Canadian Mint: N. A. Parker, Master; *Department of Finance:*
J. F. Parkinson, Economic Adviser.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	O'Leary (<i>Carleton</i>)
Aseltine	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(46).
Gélinas	Molson	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 22nd, 1967:

"The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Beaubien (*Bedford*) resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Desruisseaux, for second reading of the Bill S-23, intituled: "An Act to amend the Currency, Mint and Exchange Fund Act and the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Everett moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 6th, 1967.

(19)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 12.00 noon.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Benidickson, Burchill, Croil, Everett, Fergusson, Gouin, Haig, Irvine, Lang, Leonard, MacKenzie, McCutcheon, McDonald, Molson, Pearson, Pouliot, Rattenbury, Smith (*Queens-Shelburne*) and Thorvaldson. (22).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

On motion of the Honourable Senator McDonald, it was *Resolved* to report as follows: Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill S-23.

Bill S-23, "An Act to amend the Currency, Mint and Exchange Fund Act and the Criminal Code", was read and considered.

The following witnesses were heard:

Royal Canadian Mint:

N. A. Parker, Master.

Department of Finance:

J. F. Parkinson, Economic Adviser.

On motion of the Honourable Senator McCutcheon it was *Resolved* to report the said Bill without amendment.

At 12.20 p.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, December 6th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-23, intituled: "An Act to amend the Currency, Mint and Exchange Fund Act and the Criminal Code", has in obedience to the order of reference of November 22nd, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 6, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-23, to amend the Currency, Mint and Exchange Fund Act and the Criminal Code, met this day at 12.00 noon to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: We now have to consider Bill S-23, the Currency, Mint and Exchange Fund Act.

Senator McDonald: Mr. Chairman, have you any idea what the length of the discussion might be on this bill?

The Chairman: Let us find out and then we will be able to give the answer. Could I have the usual motion for printing?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: With regard to the question as to how long consideration of this bill might be, from the explanation which was given in the Senate, and from looking at the bill itself, it seems to be very straightforward. I do not think the witnesses who are here propose to make any statement, but if there are any questions they are prepared to deal with them.

Senator McDonald: I brought the matter up because, as I think you are aware, there is another committee meeting at 12 o'clock and I was wondering if we could dispose of this one in adequate time.

The Chairman: We may. Who knows? We will try. Is the committee prepared to deal

with this bill on the basis that the witnesses will answer any questions?

Agreed.

The Chairman: Mr. J. F. Parkinson, the Economic Advisor to the Department of Finance, is here, and with him is Mr. N. A. Parker, the Master of the Royal Canadian Mint. Are there any questions?

Senator Burchill: This was discussed pretty thoroughly in the Senate.

The Chairman: I thought it was.

Senator Thorvaldson: It is of a very technical nature and I doubt very much if anyone could ask any sensible questions to add to it.

The Chairman: Mr. Parkinson, is there any statement you could make as to the purpose of the bill?

J. F. Parkinson, Economic Advisor, Department of Finance: The purpose of the bill is to provide for the introduction of nickel coinage in place of the existing silver alloy coinage. The schedule draws up a new description of the coinage of Canada to provide for the introduction of nickel coins sometime in 1968, together of course with the continuation of the existing silver coins, including the new type of silver coin which was introduced last summer in denominations of dimes and quarters, which consisted of 50 per cent silver and 50 per cent copper, in contrast to the earlier and traditional long time coinage which consisted of 80 per cent silver and 20 per cent copper.

The reason for the introduction of this intermediate form of silver coinage some six months ago was to take account of the rise in the world price of silver which made it uneconomic and a losing proposition for the Government to continue minting so-called silver coins with 80 per cent silver content. Silver coins with 50 per cent silver content have been issued for the last six months or

so as an intermediate step towards the introduction of a pure nickel coinage.

I should just say that the introduction of the nickel coinage has been described by the Government as a step which will be taken only after full consultation with the only major group of people interested in the transition to nickel coinage, and that is the operators of vending machines, whose slots, coin selectors and detectors will have to be altered to accommodate the new nickel coins as well as the existing silver coins.

The Chairman: In the United States they have switched to silver and copper, have they not?

Mr. Parkinson: They switched to what we call a sandwich coin, which is made of cupra-nickel on both sides and a layer of copper as the meat in the middle. That coin was deliberately engineered in order to fit without any change the existing slot machines.

The Chairman: Do you propose to study that, or have you done so?

Mr. Parkinson: We have studied that, Mr. Chairman, and the Government decided for various reasons that it was undesirable to follow the United States example, even though it would have relieved the vending industry of the necessity of changing their coin selectors. We decided it was undesirable, first because it is not a particularly elegant type of coin.

The Chairman: I agree with that.

Mr. Parkinson: Also because it is unsatisfactory, and we hear rumours that the United States authorities are not happy with it; they are very interested in our plans to move into the nickel coinage. Another reason for not following it was because it is an expensive material. You have to bond the sand-

wich together, and we would have to import it from the United States; because of the quantities involved it would not pay to make it in Canada. At least, that is the advice we received.

The Chairman: Have you any comment on the economics of nickel versus silver and the availability of supply?

Mr. Parkinson: Supply obviously is more than adequate since, as you know, we are the biggest producers of nickel in the world and the price is comparatively stable. So it is reliable from that point of view. It will, of course, be a long, long time, unless real inflation takes hold, before the value of the nickel in the coin is worth more than the face value of the coin itself, which did happen in the case of silver.

The Chairman: What effect do you think the Mint ceasing to be a customer for the purchase of silver will have on the production and expanded production of silver in Canada?

N. A. Parker, Master, Royal Canadian Mint: I have been in touch with the silver industry and they would be very pleased if they did not have to sell to the Mint, because there is a big market in the world today and they can get a much higher price. Most of the silver they produce they send to Eastman Kodak.

The Chairman: Industrial use?

Mr. Parker: Yes.

The Chairman: Are there any questions that any members would like to ask? Shall we report the bill without amendment?

Hon. Senators: Agreed.

Whereupon the committee concluded its consideration of the bill.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 19

Complete Proceedings on Bill S-28,

intituled:

"An Act to amend the Defence Production Act".

THURSDAY, DECEMBER 7th, 1967

WITNESS:

Department of Industry: The Honourable C. M. Drury, Minister.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	O'Leary (<i>Carleton</i>)
Aseltine	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Leonard	
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	Macdonald (<i>Brantford</i>)	Vaillancourt
Dessureault	MacKenzie	Vien
Everett	Macnaughton	Walker
Farris	McCutcheon	White
Fergusson	McDonald	Willis—(46).
Gélinas	Molson	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, December 5th, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Burchill, for second reading of the Bill S-28, intituled: "An Act to amend the Defence Production Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, December 7th, 1967.
(20)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

In the absence of the Chairman and on motion of the Honourable Senator Croll, the Honourable Senator Leonard was elected *Acting Chairman*.

Present: The Honourable Senators Leonard (*Acting Chairman*), Blois, Burchill, Croll, Fergusson, Flynn, Irvine, Lang, Macdonald (*Brantford*), MacKenzie, Macnaughton, McCutcheon, McDonald, Molson, Pearson, Pouliot, Rattenbury, Roebuck, Smith (*Queens-Shelburne*), Thorvaldson, Walker and White. (22)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

On motion of the Honourable Senator Croll it was *Resolved* to report as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill S-28.

The following witness was heard:

Department of Industry:

The Honourable C. M. Drury, Minister.

The Honourable Senator Walker moved that the said Bill be amended as follows:

Page 1, line 7: Strike out "subject to paragraph (e),".

Page 1: Strike out lines 11 to 17, both inclusive.

The question being put, the Committee divided as follows:

YEAS—15 NAYS—3

The motion was declared *Carried*.

On motion of the Honourable Senator McCutcheon it was *Resolved* to report the said Bill as amended.

At 10.20 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, December 7th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill S-28, intituled: "An Act to amend the Defence Production Act", has in obedience to the order of reference of December 5th, 1967, examined the said Bill and now reports the same with the following amendments:

1. *Page 1, line 7:* Strike out the words "subject to paragraph (e),".
2. *Page 1:* Strike out lines 11 to 17, both inclusive.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Thursday, December 7, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill S-28, to amend the Defence Production Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard (Acting Chairman) in the Chair.

The Acting Chairman: We have before us Bill S-28.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

This bill was explained by Senator Lang on second reading. It was debated, and we now have it before us for consideration. We have before us this morning the Honourable Mr. Drury, Minister of Defence Production, and I am very glad to welcome him on your behalf and if it is your pleasure we will commence by asking Mr. Drury to make a statement on the bill.

Hon. C. M. Drury, Minister of Industry and Minister of Defence Production: Mr. Chairman and senators, I think the bill has been fairly thoroughly explained by Senator Lang. I myself had the privilege of listening to the most recent discussion of it the other evening in the Senate. I think Senator Lang has made clear that in respect of this particular bill it is to some degree a housekeeping operation in anticipation of a rather more radical bill we would expect to bring forward at some later date when, the Department of Defence Production, as such, will be converted into what it is gradually becoming under the Transfer of Duties Act, the department of supply for the Government of Canada.

In recognition of this the Treasury Board has modified the contracting regulations for

purchasing activities by the Department of Defence Production to decentralize, to a greater degree than had been the case heretofore, authority to enter into contracts, and the purpose of this bill is to bring the contracting authority under the Defence Production Act in respect of military equipment for the Department of National Defence into line with the authority for entering into contracts in respect of civilian procurement for other government departments.

Now as I understand it, the item in question at the moment is the authority of the minister to enter into contracts in respect of defence, the authority being unlimited, as the bill is now drafted, and requiring no subsequent report to any higher authority of such contracts entered into. As Senator Lang explained in the Senate, requirement to report to the Governor in Council should have been included in the bill, and I think we can all be grateful to the Senate for having perceived and taken steps to see that this omission was corrected.

I would like to suggest to the committee, Mr. Chairman, that the bill be amended by the inclusion of additional words to provide for a report being made to the Governor in Council of contracts entered into under the special clause relating to defence, if it is agreed we should have this clause.

Now, as to the necessity or desirability of the particular authority itself, I would rather like, in these circumstances, to be in the position in which my friend Senator McCutcheon finds himself. When this provision came up, I must confess it gave me some worry. I do not think most ministers like to be charged with the responsibility for very wide or large authorities of this kind; and these, in the words of the original statute, were virtually unlimited. And, as I say, I would much prefer to be in the position of a man calling on a minister to justify this, than to be the minister trying to justify it.

Basically, the dilemma is that circumstances can arise in which it is in the national interest to avoid the sometimes somewhat cumbersome machinery of governmental administration in order to get action rapidly. Secondly, circumstances do arise from time to time, as a consequence of the imperfections of any large administrative apparatus, where sums of money can be saved to the taxpayer if there is an intelligent by-passing of this administrative machinery; and I think Senator Lang did quote one case where this was enabled to be done.

Senator McCutcheon has suggested that it is easy to assemble a quorum of Treasury Board informally, at short notice, and to secure the necessary authority. This is quite true but, in my view, perhaps this tends to be rather a formality, almost a ritualistic dance. If one gets together with three ministerial colleagues from Treasury Board and gets the imprimatur on an action that is proposed to be taken, this does not provide for an adequate examination by the Treasury staff, of what is proposed, and that is what they are for. In such a case a decision would be taken largely on the strength of the assurance of the minister that it was all in order.

Senator McCutcheon: It would at least be a shared decision.

Hon. Mr. Drury: It would, sir, be a shared decision. In this sense it would be, not a sharing of responsibility, but rather an avoidance of responsibility which the sponsoring minister perhaps should be prepared to take.

As I have said, I was worried about this and, frankly, I have no strong feelings about it. I think if the section is intelligently used, it can, as Senator Lang has indicated, save the taxpayer money. However, it is open to abuse, and this is really the problem, to try to decide what is in the best interests of the taxpayer, the opportunities on occasion, when they arise, to save the taxpayer money...

Senator McCutcheon: This is not the purpose of the section, Mr. Minister.

Hon. Mr. Drury: ...as distinct from the normal and rather more rigorous scrutiny given by the Treasury staff.

I agree, Senator McCutcheon, that this is not the apparent object...

Senator McCutcheon: That is right.

Hon. Mr. Drury: ...of the section. In so far as the apparent object of the section is concerned, in today's climate it might be hard to imagine a case in which a contract in excess of those authorized under the civil regulations would be required with so high a degree of urgency that such a power, such a special power, would be needed.

However, I think senators will recall what I might call the Cuban incident, where there was considerable uncertainty as to what we might be called upon to do over a week-end. In fact, no circumstances did arise which called for urgent action of this character, but I would just suggest that they might have. And in the instances in which this has been used by myself, there are a couple of cases where military equipment was urgently needed on short notice for military purposes, where contracts had to be entered into rapidly in respect of the carrying out of fleet operations. But these, as I say, were not above the limits which are now prescribed for ministerial authority.

Senator McCutcheon: What are the limits which are going to be prescribed for you now?

Hon. Mr. Drury: Not exceeding \$500,000 if there have been competitive tenders; and not exceeding \$250,000 in the absence of competitive tenders, I understand. As I say, these limits would cover most of the instances which during my tenancy have arisen.

Senator Walker: Is it correct to say, Mr. Minister, that up to the date of the report we had from Senator Lang, there was no instance where you had any need of subsection (e), is that correct? Whatever examples you had, came within your present regulations?

Hon. Mr. Drury: No, Senator Walker, there was one instance where there was a very small number of dollars above the \$250,000.

Senator Walker: And you are suggesting this should be amended by adding that when the minister does what he likes, without any consultation, without any calling of bids, without taking the matter before his brother ministers, without going before Treasury Board, and without assembling any organization whatever, he makes the contracts himself, unimpeded—you are suggesting the cure for this section which we now think is a very bad one, would be to report the matter to the Governor in Council? Is that your suggestion?

Hon. Mr. Drury: I am suggesting that, if this authority to enter into contracts in excess of the authority provided in the Financial Administration Act is retained, the minister should be required to make a report thereon to the Governor in Council.

Senator Walker: What good would that do? It is already a *fait accompli*, the contract is already entered into. What would be the benefit of reporting it to the Governor in Council?

Hon. Mr. Drury: It serves the useful purpose, I suggest, that any audit or anticipation of audit does. I think there is no question about it.

Senator Walker: It is going to be audited anyway, eventually.

Hon. Mr. Drury: Not audited in this sense, sir. It will be audited in the sense that there will be a report of a transaction, but not a report of a special transaction.

Senator Walker: I cannot see, having served in Cabinet for four years, the benefit that accrues here. I am suggesting to you, Mr. Minister—and this has nothing to do with you or any present person—that it is a shocking suggestion that subsection (e) should be here, inasmuch as it gives the minister complete power to enter into contracts without any check at all. That sort of thing may not be the minister's fault; it may be some clever person in his department—and you know how many matters you have to take into consideration. You may not have the opportunity of checking it carefully. A matter like this could lead to gross extravagance, or could even be the result of corruption or lead to corruption. It is certainly an encouragement to corruption in high places, because when only the minister has to be got by, and not Treasury Board, the temptation is very great. I am suggesting at a time like this, when no necessity for it has been indicated, that to have such an unimpeded power when entering into contracts for millions of dollars, without any check, is asking this Senate for something which is too much.

We are the Opposition; we are outgunned two to one, but you certainly will not get this through the Commons. I am suggesting that you should withdraw subsection (e) right here before us this morning if, as you say, you have no strong feelings on the matter. Have you any objection to doing that? It would have to be done eventually.

Hon. Mr. Drury: I think, Senator Walker, I would object to a suggestion that I am asking the Senate for a grant which you describe as a "shocking power".

Senator Walker: That is right, and I mean that.

Hon. Mr. Drury: This is merely carrying forward a provision of a statute under which the government of which you formed part used such a power.

Senator Walker: There is no question about that, and it has been deleted, and for a very good purpose.

Hon. Mr. Drury: I suggest it has not been deleted, sir.

Senator Walker: You mean (e)? I thought you were putting in (e) at the present time.

Hon. Mr. Drury: Yes. You say it has been deleted. I am suggesting that the government of which you formed a part operated under a section which provides that a contract may be entered into by the minister without the approval of the Governor in Council if...

Senator McCutcheon: Two wrongs do not make a right.

Hon. Mr. Drury: I am not suggesting we should perpetuate it. I am prepared to be guided by the advice of this committee in trying to solve this problem.

Senator Walker: Let us have the "if".

Hon. Mr. Drury: I do feel quite strongly about being represented as coming before you to obtain what you call a "shocking power."

Senator Walker: I am glad you say that, because we feel strongly about it. Let us hear your "if". You are comparing our government to yours. What power did we have that is commensurate with that in paragraph (e) which you are now proposing to introduce?

Hon. Mr. Drury: It is contained in section 17 of the Defence Production Act as it now exists. Section 17 says:

A contract may be entered into by the Minister without the approval of the Governor in Council if

(i) in the opinion of the Minister, the contract must be entered into immediately in the interests of defence.

Senator Walker: Yes.

Hon. Mr. Drury: That is the present law under which a government, of which you formed part, operated.

Senator Walker: Exactly. That is true, and what are the limits on that?

Hon. Mr. Drury: None. They are right there, unlimited.

Senator Walker: Did you read paragraph (ii)?

Hon. Mr. Drury: "The estimated expenditure, loan or guarantee does not exceed"—that is a second limitation.

Senator Walker: No, no. That is a limitation.

Senator Lang: I think those are disjunctive subclauses.

Senator Flynn: No, I think you have got to have the two because after (ii) you have got to go either to the first subparagraphs or the third one.

Senator Walker: That is right. You do not even know your section, Mr. Minister.

Senator Flynn: The limit of \$25,000 applies to cases where the minister can use his own discretion.

Hon. Mr. Drury: Well, all I can say is that my understanding—and I think the understanding of the Government for a great many years—has been that, as Senator Lang has suggested, these are disjunctive and not to be read together.

Senator Flynn: It is a strange rule of interpretation as far as I am concerned.

Senator Walker: If that is so, Mr. Minister, why are you making the change? Why are you making the proposed change? Where you make it quite clear that you are getting unrestricted powers when you think it is in the interests of defence to enter immediately into a contract, why are you asking for the change to paragraph (e) and changing the other one?

Hon. Mr. Drury: I suggest that what is being removed is an authorization under the present section 17, subsection (e) (ii).

Senator Walker: (ii)?

Senator Croll: Not exceeding \$25,000.

Hon. Mr. Drury: Not exceeding \$25,000. As we interpret the present law a contract may not be entered into without the approval of the Governor in Council exceeding \$25,000 under the Defence Production Act for the Defence Department unless in the opinion of the minister the contract must be entered into immediately in the interests of defence.

Senator Walker: Then what is the limit?

Senator Flynn: Then, Mr. Minister, (ii) would be completely useless if your interpretation is valid. What is the use of this subparagraph, if you say that the minister may enter into a contract immediately in the interests of defence without considering (ii)?

The Acting Chairman: Excuse me, senator. Without considering what?

Senator Flynn: Subparagraph (ii). If you say that (ii) is disjunctive, that you can either enter into a contract immediately in the interests of defence or—and that is your interpretation—the estimated expenditure, loan or guarantee does not exceed \$25,000, you might as well delete this subparagraph (ii). If you can enter into a contract, what do you mean? You do not want to enter into a contract in the interests of defence if the amount is under \$25,000? Is that it?

The Acting Chairman: Excuse me. May I clear my own mind, Senator Flynn? You are talking about which (ii)?

Senator Flynn: The present section 17, paragraph (e).

The Acting Chairman: Surely it is clear under paragraph (e) (i) as the act is now that the limit is \$25,000. In the first instance, it is \$50,000 if they call for tenders and accept the lowest tender. Then under paragraph (e) (i), if it is immediately in the interests of defence there is no limit at all. Is that not clear?

Senator Flynn: Yes, but I do not agree with this. It is impossible. What I suggest is that the interpretation the minister is putting on this section means that when the contract does not exceed \$25,000 he does not have to be of the opinion that the contract must be entered into immediately in the interests of defence. That is impossible. It surely cannot be the intention of the legislature. The minister must use his discretion only when he is of the opinion that a contract must be entered into immediately in the interests of defence, otherwise (ii) is completely useless.

The Acting Chairman: Is that (e)?

Senator Croll: It is paragraph (e) (ii).

Senator Walker: My understanding is that if the minister says, "I am of the opinion that the contract must be entered into immediately in the interests of defence" there is no limit.

The Acting Chairman: That is right. I think that is what our interpretation is.

Senator Walker: Then if the minister says that (ii) is not another condition, a second condition, but is an alternative, it means he could enter into a contract of less than \$25,000 even if in his own opinion this contract was not in the interests of defence.

Senator Lang: I think that is correct.

Senator Flynn: That cannot be the interpretation.

Hon. Mr. Drury: I think Mr. Chairman, if I might suggest it, the key word is "immediately". Obviously both contracts are in the interests of defence. This is being done on behalf of the defence department. Each of these contracts—they are two alternative procedures, one the normal one, a contract in excess of \$25,000 without tenders, or \$50,000 with tenders—can only be entered into in the routine way subject to the approval of the Governor in Council. If, however, in the opinion of the minister, it must be entered into immediately and if there is some sense of urgency about it which does not allow the time required for seeking Governor in Council approval, and in the opinion of the minister this must be done immediately, in the interests of defence, then there is no limit.

Senator Flynn: I notice you do not insert "or" there instead of "and".

Senator Walker: I think that if you check it, you will find that that is not correct. Otherwise it would be taken with the proposed paragraph.

The Acting Chairman: The legislative counsel has indicated to me that these (i), (ii), (iii) are disjunctive—in other words "or" could be "and".

Senator Flynn: I do not agree with that.

Senator Thorvaldson: Could we have the opinion of parliamentary counsel on this?

The Acting Chairman: I have just indicated to the committee that he considers that these three items are disjunctive. Is that correct?

Mr. E. R. Hopkins (Law Clerk and Parliamentary Counsel): That is correct.

Senator Flynn: With all respect...

Senator Lang: I think this is an academic discussion in view of the fact this section will be repealed by this bill if it becomes law, and we can hear the Minister's answer when that is being debated.

Senator Walker: If the Minister has finished, I respectfully suggest that the bill

should be amended by deleting paragraph (e) and the word ahead of that in paragraph (d), that is, the word "and".

Senator Lang: I would like to ask the Minister...

Senator Walker: Have I a seconder?

Senator McCutcheon: I second that.

The Acting Chairman: There is a motion before the committee, moved by Senator Walker and seconded by Senator McCutcheon, to delete paragraph (e), and also to amend paragraph (d) by deletion of the word "and". Is there discussion on that motion? Senator Lang.

Senator Lang: I would like to ask the Minister: If paragraph (e) were struck out do you feel that the administration of your Department would be hampered in any real way?

Hon. Mr. Drury: Senator Lang, I suppose "real" is a qualitative word.

Senator McCutcheon: Just the same, it has a meaning.

Hon. Mr. Drury: I do not think that, in the day to day operations, this would make much difference. The number of contracts passed each year by the department runs into hundreds of thousands. And in the past year, this particular clause has been invoked four times, so that...

Senator McCutcheon: Could you tell us the circumstances in which it was invoked?

Hon. Mr. Drury: Yes, sir, I would be glad to. In 1966-67, a contract was entered into with a firm in Munich, Germany, called Manturbo and it covered the supply of three items of components or spares for J-79 engines for delivery to Downsview, Ontario, at a cost of \$145,000.

Senator McCutcheon: What is the new position?

Hon. Mr. Drury: Under the new position, this problem would not arise.

Senator McCutcheon: I think we might make it clear, Mr. Chairman, that I do not think any of my colleagues are quarrelling with subclause (d), or with the authority the Minister will have under that subclause. Now, if we had subclause (d), it would come under it. If he had had it, then this contract would have been entered into under subclause (d).

Hon. Mr. Drury: That is right.

Senator McCutcheon: Could you give the other examples?

Senator Walker: There is no objection to (d).

Hon. Mr. Drury: There was a contract for the supply of 6,400 yards of cloth, at a cost of \$43,456.

Senator McCutcheon: That would come under (d).

Hon. Mr. Drury: That would come under (d).

Senator McCutcheon: Right.

Hon. Mr. Drury: This was a case where, if the contract had not been awarded rapidly, the quotes offered by the contractor, based on a sub-contractor, would have gone up and the taxpayer would have been faced with a bill of some \$1,200 more.

Senator McCutcheon: Mr. Minister, I must not take the position that it justifies you in what you did, because that was not immediately in the question of defence. You are not authorized to save the taxpayers' money—I hope you will, but you are not authorized to do so.

Hon. Mr. Drury: I agree. As I tried to point out, Senator McCutcheon, this is the dilemma I have been in. I would much prefer to be in your position than where I am now.

Senator McCutcheon: That will come under (d), too. What are the other two?

Hon. Mr. Drury: There was a contract with Imperial Oil for the removal of some 600,000 gallons of gasoline in Crown-owned bulk storage at Fort Pepperrell, at a cost...

Senator McCutcheon: At a cost of...

Hon. Mr. Drury: At a cost of—now, I am sorry, I have not got the total.

Senator Walker: What is the urgency there, Mr. Minister? What is the urgency of any of these examples, all of which come within your present provisions?

Hon. Mr. Drury: Let me outline the circumstances of the case. We had a contract with Imperial Oil for the production of aviation gasoline at Fort Pepperrell, on a consignment basis, on which Imperial Oil were to keep gasoline there as fuel for use by the air force. The contract provided that, in the event of our ceasing to require the gasoline in storage there, we would buy the gasoline then in storage from there at a price of 28.17 cents per gallon. It would then be govern-

ment-owned gasoline at Pepperrell, a place where we had no use for it, and we would then have had the problem of trying to remove it and trying to dispose of it elsewhere. That was the contract.

When we were notified by the Department of National Defence that the requirements for this gasoline were not now to subsist in this manner at Pepperrell, during the closing of the operations, negotiations were entered into with Imperial Oil with a view to getting rid of this gasoline at the least cost to the Crown.

Suddenly, and this does happen in the business community on occasion, the Imperial Oil people told us that they had a tanker in the area of Pepperrell and they would take it provided we could instruct them to load this tanker immediately, at a transfer cost of 9 cents a gallon...

Senator McCutcheon: What is the total?

Senator Croll: It is 37 cents—that is, 9 plus 28.

Hon. Mr. Drury: 9 cents was the transfer cost.

Senator Croll: 9 instead of 28?

Senator McCutcheon: What was the quantity?

Hon. Mr. Drury: 552,000 gallons.

Senator McCutcheon: That would be \$45,000. That would be all right under (d).

Hon. Mr. Drury: In addition to this, they could only take away 552,000 gallons and we were left with, and had to buy, 68,000 gallons at 28 cents per gallon.

Senator McCutcheon: That is \$17,000 or \$18,000.

The Acting Chairman: Which is much less than \$500,000.

Senator McCutcheon: It is much less than a quarter of a million dollars, and the Minister has discretion up to a quarter of a million dollars. There is one more example?

Senator Walker: Is there anything in the nature of a breathtaking emergency about that?

Hon. Mr. Drury: I am giving the two or three occasions on which this has been used in the current year. In September 1966, meat was to be delivered to Royal Canadian Navy ships on or before September 14, 1966. A tender was sent out to meat packers who should have been in the position to supply this. Owing to a strike which supervened,

only one bid was received from Swift Canadian packers. The other two were on strike. It was not certain when the strike would be resolved. While we were waiting to get bids from the others and for the strike to be settled, the time of departure of the fleet on exercises came round and we had no alternative but to accept the one, single bid from Swift Canadian Co. Limited.

Senator Walker: How much was involved, Mr. Minister?

Hon. Mr. Drury: In this case the amount was \$46,000.

Senator Walker: That is a breathtaking emergency, too.

Hon. Mr. Drury: I beg your pardon?

Senator Walker: I say that that is a pretty breathtaking emergency. You are giving us some prime examples of why you should not use that discretion, with the greatest respect. Why not summon the Treasury Board, or get an order in council?

Senator McCutcheon: Mr. Chairman, may I put it to the minister—and I may be out of order in doing so—that he will have absolute discretion under the law to carry out these four transactions that he has mentioned, if subsection 1, paragraph (d) is re-enacted as contemplated in this bill. He does not even have to call for tenders; he has absolute authority up to a quarter of a million dollars. But he has not given us an example—and there are only four contracts, after all, involving hundreds of thousands of dollars—of where we went over \$100,000. I suggest that the minister might agree that the amendment proposed is a proper one in the circumstances.

The Acting Chairman: In other words, he did not have the power within the last year.

Senator McCutcheon: But he will have.

The Acting Chairman: He will have the power under paragraph (d).

Senator McCutcheon: Under paragraph (d), yes. Our motion is to strike out paragraph (e).

Senator Walker: And I would add, Mr. Chairman, in paragraph (d) that first phrase should also be struck out, "subject to paragraph (e)," if I may intervene again.

The Acting Chairman: Is there any further discussion?

Senator Walker: May I hear from Senator Lang, who was so reasonable under all cir-

cumstances, as to whether he agrees with the amendment?

Senator Lang: That rather puts me on the spot, Mr. Chairman.

Senator Walker: Oh, no.

Senator Lang: I do not like to try to give an opinion which involves a knowledge of the administration of the department, but from what knowledge I have of past events I think they would indicate that paragraph (d) would be ample authority. But I am not a seer. I cannot foresee what emergencies in this pushbutton age might arise which would hamper the minister in his activities, if paragraph (e) were deleted.

I think I would support Mr. Walker's amendment, if the minister answered my question in the negative.

Senator Walker: Perhaps the minister might be good enough to agree to our consulting him before voting. Would he not agree to deleting this? We are not here to embarrass him at all. We are trying to be reasonable, and we have seen no necessity for it so far. The minister himself had not noticed it himself originally. Would he not agree for the time being at least that it should be deleted until the matter has had further consideration.

Hon. Mr. Drury: I would agree that it might well be deleted, subject only to the caveat that there is perhaps—and I only say perhaps—some risk in making more difficult the taking of appropriate action in the case of some sudden emergency that might arise, about the nature of which, quite frankly now, I cannot offer a valid hypothesis or suggestion.

Senator Smith (Queens-Shelburne): Mr. Chairman, if I may ask a question, what were the circumstances and in what year was the present subsection (1) of section 17 enacted?

Hon. Mr. Drury: It was enacted in 1951 at the time of the establishment of the department, the original Defence Production Act, and it has been carried through in the law ever since then.

Senator Smith (Queens-Shelburne): 1951. Was that not the time of the Korean conflict?

Hon. Mr. Drury: Yes, sir, and our involvement in Korea was obviously very much more active and very much more immediate in terms of belligerency or combat operations than our present involvement in peacekeep-

ing operations, particularly in Cyprus. By reason of the size of our force in Cyprus, it does not look as if urgent contracts would be required of an immediate character in excess of the amounts of money we have been talking about.

Senator Roebuck: May I ask this question? In times of belligerency or war, would not the War Measures Act give you all the power that you are asking for here?

Senator McCutcheon: And usually you need a proclamation of the Governor in Council to bring that into effect.

Senator Roebuck: Yes; would you not be adequately covered when you are in that kind of situation?

Hon. Mr. Drury: Under the War Measures Act this kind of situation would be adequately covered.

Senator Roebuck: That is what I thought. So this applies, or is needed, only in times when we are not in war?

Hon. Mr. Drury: Yes, sir—not formally at war.

The Acting Chairman: Mr. Minister, may I ask what is the minimum time required to call a meeting of the Treasury Board?

Hon. Mr. Drury: As Senator McCutcheon has indicated, one can get together a quorum of the Treasury Board at very short notice.

The Acting Chairman: Is there no minimum time required?

Hon. Mr. Drury: There is no minimum time.

Senator McCutcheon: All you have to do is make a telephone call.

Hon. Mr. Drury: There is no minimum time required at all. The problem really is one of adequately instructing or briefing the ministers who are being called upon to share responsibility for a decision. And I feel that it is perhaps a little unfair to ask colleagues to share responsibility for a decision on which they have not been adequately briefed.

Senator McCutcheon: Surely that is a repudiation of the doctrine of solidarity. You all share that responsibility no matter whether you know anything.

Senator Roebuck: In that case, you are asking that the general public have more confidence in the minister than his colleagues have. Surely, if you as the acting minister telegraphed or telephoned to your colleagues,

they would have all the confidence in you that you are now asking for the public to have.

Senator Walker: That is a very good point, Senator.

Hon. Mr. Drury: That is quite an interesting philosophic point. I hope the purpose of this provision is not merely to lend colour, or more colour, to a decision taken by a minister, but that the purpose of it should be to ensure that the minister does the right thing, and the better the advice he gets the more right he is likely to act. Now, if, on his own, he operates on departmental advice, his action is not likely to be better or worse for having told three of his colleagues what he is going to do, having advised them just sufficiently to persuade them to say "yes." This is really the point I am trying to make.

The purpose of the Treasury Board's scrutiny and approval is to allow the proposed action by the minister to be scrutinized by advisers to the Treasury Board, the Treasury staff, so that the Treasury Board is instructed or advised, not by the minister, but by its own staff who have had a look at the proposal, and on occasion this has led to the Treasury Board's indicating an alternative course of action to one that the minister and his departmental staff have proposed.

Senator McCutcheon: Yes, but you are going to be pretty free of that from now on.

Hon. Mr. Drury: I agree with you, Senator McCutcheon, that in today's circumstances the limitations of \$10,000 and \$25,000 involve a huge amount of paper work which is just useless motion.

Senator McCutcheon: When you get to a quarter of a million dollars or half a million dollars you can strike most of it out.

Hon. Mr. Drury: Certainly.

The Acting Chairman: Is there any further discussion? Are you ready for the question? Shall I recall to your minds the motion of Senator Walker? It is that in paragraph (d) of section 1 of the Bill the words "subject to paragraph (e)" in line 7 be struck out, that the word "and" in line 11 be struck out, and that paragraph (e) be struck out.

Senator MacKenzie: Before voting on this motion, Mr. Chairman, could I ask the Minister whether he approves of it? Does he think it will seriously impair his usefulness in terms of his duties in an emergency situation?

Hon. Mr. Drury: No, Mr. Chairman, I do not think it will seriously impair. It might, if an occasion did arise, make the job a little more difficult to do, but I do not think it will make for insuperable problems.

The Acting Chairman: Are you ready for the question?

Senator Roebuck: Before we vote on it, Mr. Chairman, I should like to say something. I do not like this clause, but, at the same time, we are taking a drastic action in striking it out completely. Has the Minister not some compromise to suggest between the motion and the bill that is before us? Is there not some medium course we might take that will be satisfactory?

I am an outsider looking in, in so far as military affairs are concerned, and the Minister's connection with them. At the present moment, if this motion is pressed, I will vote for it, but I do not like striking out paragraph (e) completely nor do I like paragraph (e) as it stands. Is there not some more reasonable course we might take?

Senator McCutcheon: Surely, the Minister has indicated, in every example he has given us of where he has used his powers of absolute discretion, that he can now use those same powers under paragraph (d), and use them in respect of much larger amounts. I do not think there can be any compromise, except something like writing in a figure of \$1 million or something like that, and I do not think that that is fitting.

Senator McDonald: What is the maximum amount of money you can authorize under paragraph (d)?

Hon. Mr. Drury: Under paragraph (d) it will be \$500,000.00 if tenders have been called and more than one tender is received, and \$250,000.00 without tender or where only one tender is received.

Senator Walker: That is a lot.

Hon. Mr. Drury: I am referring here, of course, to a valid tender.

The Acting Chairman: Are you ready for the question. Will all those in favour of the amendment moved by Senator Walker please raise your right hand?

Senator Walker: Mr. Chairman, could we have a poll taken?

The Acting Chairman: We do not record names in committee, Senator Walker.

The Clerk of the Committee: Contents, 15.

The Acting Chairman: Those against?

The Clerk of the Committee: Non-contents, 3.

The Acting Chairman: The motion is carried by a vote of 15 to 3.

We have to deal now with the rest of the bill. Is there any discussion on paragraph (d). With this amendment, Mr. Minister, do you wish to say anything further with respect to the bill?

Hon. Mr. Drury: I think, Mr. Chairman, that in respect of paragraph (d) there seems to be general agreement.

Senator McCutcheon: Mr. Chairman, I move that the bill be reported as amended.

Senator Walker: I second that motion, Mr. Chairman.

The Acting Chairman: It is moved by Senator McCutcheon, seconded by Senator Walker, that the bill be reported as amended. Will all those in favour please indicate? The motion is carried.

As there is nothing further before the committee, the meeting is adjourned.

Whereupon the committee adjourned.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 20

Complete Proceedings on Bill C-161,

intituled:

"An Act to establish a Department of Consumer and Corporate Affairs".

TUESDAY, DECEMBER 12th, 1967

WITNESS:

Department of the Registrar General: The Honourable John N. Turner,
Minister.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Molson
Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Bedford</i>)	Haig	Paterson
Beaubien (<i>Provencher</i>)	Hayden	Pearson
Benidickson	Irvine	Pouliot
Blois	Isnor	Power
Bourget	Kinley	Rattenbury
Burchill	Lang	Roebuck
Choquette	Leonard	Smith (<i>Queens-</i>
Cook	Macdonald	<i>Shelburne</i>)
Croll	(<i>Cape Breton</i>)	Thorvaldson
Dessureault	Macdonald (<i>Brantford</i>)	Vaillancourt
Everett	MacKenzie	Vien
Farris	Macnaughton	Walker
Fergusson	McCutcheon	White
Gélinas	McDonald	Willis—(46).

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 11th, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Croll, seconded by the Honourable Senator Fergusson, for second reading of the Bill C-161, intituled: "An Act to establish a Department of Consumer and Corporate Affairs".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Croll moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, December 12th, 1967.

(21)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10:00 a.m.

In the absence of the Chairman and on motion of the Honourable Senator Croll, the Honourable Senator Leonard was elected *Acting Chairman*.

Present: The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Beaubien (*Bedford*), Cook, Croll, Everett, Fergusson, Flynn, Haig, Irvine, Lang, Macdonald (*Cape Breton*), McCutcheon, McDonald, Paterson, Pouliot, Roebuck and Smith (*Queens-Shelburne*). (18)

In attendance:

E. Russel Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and
Chief Clerk of Committees.

On motion of the Honourable Senator Croll it was *Resolved* to report as follows: Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill C-161.

Bill C-161, "An Act to establish a Department of Consumer and Corporate Affairs", was read and considered.

The following witness was heard:

Department of the Registrar General:

The Honourable John N. Turner, Minister.

On motion of the Honourable Senator McCutcheon it was *Resolved* to report the said Bill without amendment.

At 10:40 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, December 12th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-161, intituled: "An Act to establish a Department of Consumer and Corporate Affairs", has in obedience to the order of reference of December 11th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'Arcy Leonard,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Tuesday, December 12, 1967.

The Standing Committee on Banking and Commerce, to which was referred Bill C-161, to establish a Department of Consumer and Corporate Affairs, met this day at 10 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, it is 10 o'clock and we have a quorum. The Senate has referred to us Bill C-161, an act to establish a Department of Consumer and Corporate Affairs. This is an important Government measure. Shall we have the usual order for the printing of the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Acting Chairman: Honourable senators are aware that this bill was sponsored in the Senate chamber by Senator Croll, and we had an excellent debate on second reading before referring it to committee. We have as our witness today the Honourable John N. Turner, Registrar General of Canada. As this is his first appearance before this committee I would like to say a special word of welcome to him in his capacity as Registrar General.

The Honourable John N. Turner, Registrar General of Canada: Thank you, Mr. Chairman.

The Acting Chairman: Is it your wish that we commence in the usual way with a statement by the minister on the bill?

Hon. Senators: Agreed.

The Acting Chairman: Perhaps you would introduce the people you have with you, Mr. Turner.

Hon. Mr. Turner: Yes, I will. Mr. Chairman, honourable senators, les honorables sénateurs, I have with me the Deputy Registrar General, Mr. Jim Grandy; Mr. Jim Ryan of the Department of Justice, and Mr. Lloyd Axworthy and Mr. G. Sicard of my department. The Parliamentary Secretary, Mr. O. Laflamme, was not able to be here because he has been seconded to the Housing Conference, so I want to present his excuses.

I am delighted to be here and I want to say first of all that I appreciated very much the quick and effective fashion in which the Senate dealt with the bill. I heard parts of the debate; I have read all the proceedings of the debate. I left when the lights went out on Senator Everett, but I think that you touched on most of the issues.

Briefly, and this will be a brief statement, this is a pioneer effort for a national government in the Western world. Should the Senate lend its authority to this bill, there will be no other department like this in the Western world. There is no other government department concerned specifically with the demand side of the market place. That is to say, with the investor or with the consumer.

This bill will give the department authority to deal on behalf of the demand side of the market with both sides of the market relationship: the demand side in so far as it affects the consumer and the investor, the supply side in so far as it affects many aspects of the commercial community having to do with the investor or the consumer. And that explains the grouping of consumer affairs; corporations and corporate securities; combines, mergers, monopolies and restraint of trade; bankruptcies and insolvencies, and patents, copyrights and trademarks.

So this is a new economic orientation to link the legal regulatory sides of government with a unified economic policy on behalf, as I have said, of the consumer and investor particularly.

I want to pay tribute again, as I did in the other place, to the Senate-House of

Commons Committee, and I am delighted to see Senator Croll here. I think that the Senate can take a good deal of credit for the impetus behind this bill. A good deal of the wording, particularly in clause 6, which sets forth the consumer powers, is a direct result of the recommendations of that Senate-House of Commons Committee.

Now, we would hope to create a climate for a market place in Canada that would be more effective for both purchaser and producer. We would hope that this department would assist in promoting the working of free competitive forces enabling the consumer to gain the maximum use of his income.

I noticed that Senator Everett paid special attention to the competitive forces affected by this bill. This bill in so far as it has any regulatory power over the market place relies on competitive forces. We believe that the consumer and purchaser in the long run will get a better price and better quality goods if competitive forces are really at play and if there are no fraudulent or misrepresenting market practices, and if there is no restraint in trade or collusion in prices and that sort of thing.

The department would have as its object the protection of the consumer against unwarranted and harmful business practices. I have mentioned fraud; I have mentioned restrictive trade and misleading advertising, and goods that may be harmful or unsafe. We would also have the duty of insuring that full information and knowledge are available to the consumer. Of course, the bill in its terms gives the investor and consumer a direct representation in the councils of Government.

Now, some honourable senators asked during the debate what was new in the bill; what did it give the Registrar General that he did not already have? Well, there are two prime additions to the powers given to a Minister of Consumer and Corporate Affairs over those now currently enjoyed by the Registrar General. First is the consumer affairs in clause 5(a) and secondly, corporate securities in clause 5(b).

Senator McCutcheon: I do not want to interrupt the minister, but is that the only change that has been made in the present powers of the Registrar General, from consumer affairs to corporate securities? I would suggest that the omnibus term in the legislation now probably would pick up securities.

Hon. Mr. Turner: Well, I will not get into a legal argument with the honourable senator, but I would suggest that the federal Government, in my opinion, will have to establish a presence in the securities field in Canada in the regulation of securities. I think that, in furtherance of the proper working of a national capital market, the federal Government will have to be involved.

The question that will have to be negotiated with the provinces is what type of vehicle will regulate our interests in the securities market. Will it be a federal securities commission or will it be a joint federal-provincial commission along the lines envisaged by Mr. Langford of the Ontario Securities Commission?

Senator McCutcheon: That makes it abundantly clear.

Hon. Mr. Turner: That is right. So this will be a new exercise of authority on the part of the federal Government, because we have not exercised any authority in the securities field, and to my mind have suffered from it, particularly in our relationship with the United States through the Securities Exchange Commission in Washington, because we have been unable to provide reciprocity in information and reciprocity in enforcement in security matters.

The other addition is the addition of the words "consumer affairs," and the words relating to consumer affairs spelling out the powers that are found in clause 6. At the moment, within the federal Government, there are several departments and agencies having some authority over consumer affairs. These were carefully set out in Senator Croll's speech and in Senator Carter's speech they include the Department of Agriculture, the Department of Fisheries, the Department of Trade and Commerce, the Dominion Bureau of Statistics, the Department of Justice, under the Criminal Code, the Board of Broadcast Governors, the C.B.C. and others.

But no department has, as its primary responsibility, the representation of the consumer. All these consumer agencies in the other departments have really been annexes in departments representing a producing interest in the country. After all, the Department of Agriculture is supposedly representing the farmers and the agricultural producers; the Fisheries Department represents the fishermen; Labour represents the working men of the country, and Trade and Com-

merce and Industry represent the interests of the businessmen, and so on. So that their primary interest under their statutes is to represent the producers.

Clause 6 is an attempt to co-ordinate those agencies of Government which have had as their prime purpose the representation of the consumer; it is to co-ordinate these under one department. Now, I say "co-ordinate" because we have not made any judgments as to how or where these various areas of Government should be administered. In other words, we are not in the business of empire building. The prime job at the moment is to co-ordinate these agencies into a unified policy, so that clause 6(a) gives the minister the power to initiate, recommend and undertake programs designed to promote the interests of the Canadian consumer. There is no power resident in any Canadian department of Government that sets that out.

Clause 6(b) gives the minister power to co-ordinate programs designed to promote the interests of the Canadian consumer. There is no department of government that now has that power. Clause 6(1)(c) allows the minister to be the co-ordinating element with the provinces, agencies and other private institutions. There is now no department having that co-ordinating authority to liaise with the provinces.

Then in clause 6(1)(d) it gives us central control over information services. Clause 6(2) gives the minister an overall research function, and honourable senators should observe that the research function is not limited merely to consumer elements but it also applies to cover everything in clause 5. I want to say that this is not a complete consumer program. This is an enabling bill; there is a considerable consumer program already existing within the Statutes of Canada, but administered on a relatively unco-ordinated basis by several departments and agencies. This, as I said, is an enabling bill centralizing the policy, initiative and co-ordinating authority in one department. The powers are already in the legislation; they are not in this bill. But it is the power in existing legislation that gives this bill its teeth, under the co-ordinating power for uniform enforcement of all statutes that up until now have been enforced rather sporadically and in an unco-ordinated way.

Senator Flynn: Can you give an example of this? Earlier this morning we were studying an act to amend the Fish Inspection Act

which will still remain the responsibility of the Minister of Fisheries. What power does this bill give to you so far as the consumer is concerned since this bill is concerned not only with the producer but with the consumer too?

Hon. Mr. Turner: This not only applies to the Fish Inspection Act. The Economic Council of Canada demonstrated there are four or five sets of inspectors now visiting grocery stores and supermarkets across the country to inspect various services; the departments of Agriculture and Fisheries, Trade and Commerce, under the Weights and Measures Branch, and the Dominion Bureau of Statistics. There are other inspectors concerned with the question of misleading advertising for the Department of Justice.

Obviously it is not our intention immediately to centralize this operation, but we have set up an interdepartmental committee in anticipation of the co-ordinating authority under this bill. The chairman of that committee will be the Deputy Registrar General, and, if the bill becomes law, the deputy minister of this department. The secretariat will be under the control of this department, and one of our first jobs will be to analyse those areas of duplication within the federal structure. You are right in saying we have no statutory authority to eliminate the fishery retail inspection services, but we would hope with a little better interdepartmental co-ordination we would be able to eliminate some of the duplication that appears in the overall government structure.

Senator Roebuck: Do you foresee legislation that will in due season consolidate under your jurisdiction these powers that are spread around in various departments?

Hon. Mr. Turner: I do not think legislation would be necessary to transfer those powers to the new department. I think the Transfer of Duties Act is probably sufficient to transfer departmental authority from one department to another. So I would not contemplate any legislation for that purpose.

Senator McCutcheon: You are not contemplating either putting the Fish Inspection Act and the Weights and Measures under your department? You are not contemplating anything other than co-ordination?

Hon. Mr. Turner: No, as I said that we have made no prejudgments as to where administration can best be situated. One of our first objectives will be to find out how

best the administration can be situated in the federal structure. The Economic Council of Canada suggested that perhaps Food and Drugs ought to be transferred to the new department. On the other hand, it has been suggested that Weights and Measures should be left where it is. But we have made no prejudgments on that either. One of our main problems will be co-ordination with the provinces. I would say a larger share of consumer jurisdiction and consumer authority lies with the provinces, particularly in the retail end, aside from the criminal aspects of it. I think one of our immediate jobs would be to establish an effective system of liaison with other departments. Furthermore, one of our immediate jobs will be to develop a public consciousness not only on behalf of the consumer but also on behalf of the business community. I have met with several retail and food associations and have assured them that we need their co-operation if this department is going to do what it is hoped.

At this stage I want to say three things that this department is not: It is not a new opportunity for more bureaucracy. I believe that it is primarily a reorganization of the existing consumer agencies of the Government. If it is properly done a lot of duplication can be eliminated.

We do not contemplate this year more than 26 new positions in the whole consumer section, and we hope that we are going to be able to recruit from most of the existing agencies.

It is not more Government intervention. We are not intervening in the market place, except in those areas I have already described to you: fraud, misrepresentation, those areas within the Combines Investigation Act, or where public health and safety is involved.

Senator McCutcheon: In those areas where there is now specific legislation.

Hon. Mr. Turner: Those areas where there is now specific legislation. I am not saying that we may not find, as a result of this co-ordination, that there are gaps. I think there are gaps in the case of hazardous substances; and I think there is lack of uniformity in the enforcement of the law regarding misleading advertising. There are these gaps. You are right in saying, senator, that there is a good deal of statutory authority—which will constitute the teeth and the means of enforcement.

I am saying that this department by itself does not signify more Government intervention into the market place.

Finally, I do not contemplate appreciably more Government expenditures as a result of this department. It is not going to be a duplication. I would hope that it is going to be a better co-ordination and centralization of existing services.

Honourable senators might be interested in knowing that the expenses for this department in the current fiscal year total \$8 million, less revenues of \$6½ million. Those revenues are derived from patent applications, trademark applications, our statutory share of the bankruptcy system, in corporations of companies, and so on. I do not want to suggest that we have been healthy financially, merely because bankruptcy has been so prevalent in the last two or three years in this country. However, this department will cost the Canadian taxpayer, net, somewhere between \$1½ million and \$2 million. I am not saying that that is not a large a sum of money but I am saying that compared to the total federal budget of \$10,300,000,000, this amount is not great.

Senator Everett: These figures you give are last year's?

Hon. Mr. Turner: The current fiscal year.

Senator Roebuck: The revenue you mention is now collected by other departments, is it not?

Hon. Mr. Turner: No, it is collected by us and then turned over to the Consolidated Revenue Fund.

Senator Everett: This is the financial situation of your department, prior to the inclusion of this bill?

Hon. Mr. Turner: That is right, on contemplating some of these positions.

Senator Lang: When this bill is through, the net cost will be about \$1½ million to \$2 million?

Hon. Mr. Turner: I am anticipating those figures for the year ending March 31, 1968, the extension before you now.

I am very pleased to have had the opportunity to appear before this committee and I am of course at the disposal of the committee.

The Acting Chairman (Senator Leonard): Thank you, Mr. Minister. The meeting is now

open for questions. The minister has indicated he is prepared to answer to any questions.

Senator Lang: To come back to the introduction of this legislation, you said this department is unique in the western world. Is there something unique about Canada that it requires this department where it is not necessary in other jurisdictions? Is it our geographical situation, is it our lack of a volunteer consumer organization such as they have in the United States; or is it the so-called gullibility of the consumers of Canada?

Hon. Mr. Turner: If I may just sneak up on that question a bit, I think our consumer organizations are as strong as those in any country in the world. The Canadian Association of Consumers have been pressing for this type of department since 1960.

Senator McCutcheon: They are certainly as noisy.

Hon. Mr. Turner: I will not argue that. I contemplate that the economic forces, including the complexity of the market place, that have prompted the Government to introduce this bill, are similar to those that inevitably in the United States and in the United Kingdom, and in other European countries, will prompt similar action.

There are already before the Congress of the United States bills to set up a Department of Consumer Affairs. At the moment, the American experience is limited to an advisory committee to the President. That committee has no co-ordinating, initiating or executive authority.

The United Kingdom experience is that of a statutory consumer advisory council.

So it is quite true that, as I said in my opening statement, no other country has accorded ministerial authority on the one hand, or ministerial responsibility on the other hand, for the demand side of the market place. I believe that this will be inevitable.

I believe that there is nothing to be concerned about the fact that, for once, Canada is anticipating an economic situation rather than following a practice in the United States and the United Kingdom.

Senator McCutcheon: Something like the unification of the armed forces?

Hon. Mr. Turner: It is a pioneering effort, let us say.

Senator Flynn: In reference to the words used by Senator Croll and Senator Everett, one said it was the greatest thing done by any government, and the other spoke of its being a monument.

Hon. Mr. Turner: Senator Croll has a better command of language than I have.

Senator Flynn: If the pioneering would stop where it is now—it is only here we will be able to judge the monument.

Hon. Mr. Turner: Senator Flynn, I feel you are going to be very proud of this discussion in 1967.

Senator Croll: What the minister perhaps did not say was that departments such as this were recommended, first by President Kennedy and then by President Johnson, but they were not able to get it through Congress. Also, the latest report from Britain indicates that they are turning away from the voluntary efforts they have been making and directing this question to the Board of Trade, in an effort to carry out these particular duties. Surely, once in our time we can be ahead of those countries instead of being behind them?

Hon. Mr. Turner: I was being typically modest in the Canadian fashion. I agree. I have already received a lot of interest from the United States and from the United Kingdom about this department. I also said that perhaps it was un-Canadian to say that we would like to have facts before policy, but we have tried to ascertain the facts and we are going to ascertain the facts before establishing policy in this particular field.

Senator Croll: Let me say one thing more to show how we are moving. We have dealt with the matter of disclosure here, and then we have dealt with it in the Bank Act.

Each province—Ontario, Nova Scotia, and so on—has done something about it at the present time in its own way—yet in the United States it was not until last week that they were able to get through a bill partially covering that same subject.

Senator McCutcheon: What do you mean by "disclosure"?

Senator Croll: Disclosure with respect to the cost of credit, disclosure on credit.

Senator McCutcheon: You are limiting it to that one?

Senator Croll: Yes.

Senator McCutcheon: So that I can understand.

Senator Croll: Yes, disclosure of credit is merely one example. We are well ahead of all the rest of them, and they are endeavouring, to the best of their ability, to cover that particular, vital subject. They have not been able to do it in the United States up to the present time. The last bill they passed only partially covered it. But we have been able to do it, not only at the federal level but at the provincial level in each province, by bills passed within the last two years.

The Acting Chairman: Senator McCutcheon, have you any further questions?

Senator McCutcheon: No. I move that the bill be reported without amendment.

Senator Croll: I second the motion.

Senator McCutcheon: Mr. Chairman, I hope the minister will come back a year from now and will use his actions to justify his optimism today.

The Acting Chairman: I am sure we will always be glad to have the minister appear before us.

Hon. Mr. Turner: I might say, Mr. Chairman, that I have enjoyed the encounter very much indeed. I contemplate a number of legislative measures which will have to come before this committee in the next six months.

The Acting Chairman: Is there any discussion on the motion?

Hon. Senators: Carried.

Whereupon the committee adjourned.



Second Session—Twenty-seventh Parliament

1967

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 21

Complete Proceedings on Bill C-164,
intituled:

"An Act to amend the Industrial Development Bank Act".

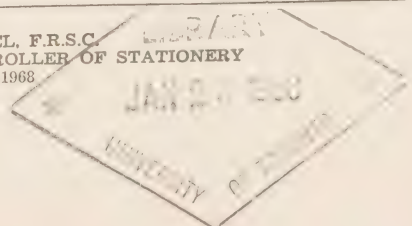
WEDNESDAY, DECEMBER 13th, 1967

WITNESS:

BANK OF CANADA: J. R. Beattie, Deputy Governor.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968



THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	O'Leary (<i>Carleton</i>)
Aseltine	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald (<i>Cape Breton</i>)	Thorvaldson
Croll	MacKenzie	Vaillancourt
Dessureault	Macnaughton	Vien
Everett	McCutcheon	Walker
Farris	McDonald	White
Fergusson	Molson	Willis—(45).
Gélinas		

Ex officio members: Connolly (*Ottawa West*) and Flynn.
(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, December 12th, 1967:

“With leave of the Senate,

The Order of the Day to resume the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Cook, for second reading of the Bill C-164, intituled: “An Act to amend the Industrial Development Bank Act”, was brought forward.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Cook, for second reading of the Bill C-164, intituled: “An Act to amend the Industrial Development Bank Act”.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 13th, 1967.

(22)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10:00 a.m.

In the absence of the Chairman and on motion of the Honourable Senator Croll, the Honourable Senator Leonard was elected *Acting Chairman*.

Present: The Honourable Senators Leonard (*Acting Chairman*), Cook, Croll, Fergusson, Flynn, Haig, Irvine, Lang, MacKenzie, McDonald, Molson, Pearson, Pouliot, Rattenbury, Smith (*Queens-Shelburne*) and Vaillancourt. (16).

Present, but not of the Committee: The Honourable Senators Carter and Méthot.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel. R. J. Batt, Assistant Law Clerk, Parliamentary Counsel, and Chief Clerk of Committees.

On motion of the Honourable Senator Croll it was *Resolved* to report as follows: Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on Bill C-164.

Bill C-164, "An Act to amend the Industrial Development Bank Act", was read and considered.

The following witness was heard: *Bank of Canada:* J. R. Beattie, Deputy Governor.

On motion of the Honourable Senator Rattenbury it was *Resolved* to report the said Bill without amendment.

At 11:15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, December 13th, 1967.

The Standing Committee on Banking and Commerce to which was referred the Bill C-164, intituled: "An Act to amend the Industrial Development Bank Act", has in obedience to the order of reference of December 12th, 1967, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 13, 1967

The Standing Committee on Banking and Commerce to which was referred Bill C-164, to amend the Industrial Development Bank Act, met this day at 10 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard (Acting Chairman), in the Chair.

The Acting Chairman: Honourable senators, the Senate has referred to us Bill C-164, a Government measure to amend the Industrial Development Bank Act. Shall we have the usual order for the printing of the proceedings?

Hon. Senators: Agreed.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Acting Chairman: Honourable senators, we have with us today Mr. J. R. Beattie, the Deputy Governor of the Bank of Canada and also a member of the executive committee of the Industrial Development Bank. Mr. Beattie is well known to this committee and has been before us on a number of occasions. He has with him Mr. Grey Hamilton, Deputy Secretary of the Industrial Development Bank. Is it your pleasure that we proceed in the usual way and ask Mr. Beattie to make a statement on the bill before us?

Hon. Senators: Agreed.

The Acting Chairman: Mr. Beattie, will you proceed with a statement on the bill?

Mr. J. R. Beattie, Deputy Governor, Bank of Canada: Mr. Chairman, honourable sena-

tors, I do not think I need to burden the time of the committee with very many opening remarks. First of all I should say that the President of the Industrial Development Bank, Mr. Rasminsky, learned of this meeting only late yesterday, as indeed you did yourselves; he had several appointments this morning with people from out of town which made it very difficult for him to come, so he asked me to come in his place.

Senator Lang: With respect, I would like to suggest that there is really no business of the President of the Industrial Development Bank as important as appearing before a parliamentary committee, notwithstanding visitors coming from out of town. I do not know whether that is the feeling of the committee but I feel very strongly about it.

The Acting Chairman: Thank you, Senator Lang. Perhaps Mr. Beattie might continue.

Mr. Beattie: It was too late for him to inform these people that he was unable to see them. I know that if members of the committee do wish to hear from Mr. Rasminsky, he would certainly regard it as a first claim on his time.

Senator Croll: In sharing the senator's view, may I say that we are a bit derelict ourselves. What is happening is that it is very difficult for the civil service to keep up to this fast-moving Senate.

Mr. Beattie: It is pretty fast.

Senator Croll: We passed the bill last evening and we are already meeting this morning. That is moving pretty quickly, for them to do the organizing. I have no doubt that the telephone call went out after we passed the bill about four or five o'clock; and it is understandable. Ordinarily, I think Senator Lang would be right; but under the circumstances one can understand what has happened.

The Acting Chairman: Perhaps I should remind honourable senators that if, after hearing the witnesses today, including Mr. Beattie, if the committee still wishes to hear Mr. Rasminsky we can adjourn. There is not much rush about the matter. If we want to hear Mr. Rasminsky we can hear him. That does not take away from Senator Lang's point or Senator Croll's remarks.

Senator Flynn: After we have heard Mr. Beattie, we can decide whether we wish to hear Mr. Rasminsky and if so the committee could meet again.

The Acting Chairman: When we have finished today's proceedings, if we still wish to hear him we can do so.

Mr. Beattie: Honourable members of the committee will have received the annual report of the Industrial Development Bank. I see that most honourable senators have been looking at the report since they came into the room. It has a good deal of information about the bank's recent operations and where things stand now.

The Industrial Development Bank has been making about 2,200 loans a year, for something over \$100 million. It was coming very close to the end of its borrowing authority and facing the prospect, within a matter of some months, of having to start to cut back its rate of lending so that it would come within the amounts provided by the flow of repayments, which are currently around \$60 million a year.

Senator Pearson: Can you give us a breakdown of the size of some of those loans?

Mr. Beattie: I would say about 50 per cent of all loans that the I.D.B. has made were for \$25,000 or less; about 70 per cent for \$50,000 or less; and about 90 per cent for \$100,000 or less. It was provided in the original act, and the I.D.B. has always taken the provision very seriously, that its main concern was to lend to smaller businesses.

Senator MacKenzie: What is your record of repayments? Do you get most of them back in due course?

Mr. Beattie: Yes, Senator MacKenzie. We never make a loan if we do not think we are going to get the money back. In most cases we are right. We have made some losses, and I am sure that anyone familiar with the lending business will realize that in such an

operation one is bound to have some losses; but we have had surprisingly few in relation to the apparent risk at the time the loan was made.

Senator MacKenzie: On balance, do you make a profit?

Mr. Beattie: We are self-financing. We have set up a reserve for losses, which is somewhat smaller than the reserve the chartered banks or trust and loan companies are permitted to have. The volume of write-offs, amounts written off to date, is of the order of \$3 million, over 23 years. The reserve for losses at the moment is \$7½ million, which is about 1.9 per cent of the amount of loans presently outstanding or committed.

Senator MacKenzie: What is the present interest charge? Is it the current going rates?

Mr. Beattie: We have to gear our lending rates to our borrowing rates; and the borrowing rates are geared to the lending market.

Senator MacKenzie: So it is the going rate?

Senator Croll: What is the current rate?

Mr. Beattie: The present rate for smaller loans is 8 per cent. That has been increased from 7½ per cent to 8 per cent in recent weeks. That is the rate that pertains to loans up to \$75,000.

Occasionally, a very small loan which has only second mortgage security, which is very marginal security, may be at a higher rate, but the standard rate for smaller loans is 8 per cent.

On \$75,000 to \$150,000, the standard rate is 8½ per cent. From \$150,000 to \$350,000 it is normally 9 per cent. And for loans over \$350,000, which are not very numerous, there is a minimum of 9 per cent.

One reason for charging the higher rate on the larger loans is that we have this injunction in the act, that we must not lend to anyone who can get the money elsewhere on reasonable terms and conditions. We try very conscientiously to abide by that injunction, but it is more difficult to interpret as the size of the loan gets larger, because with the larger loans there are clearly more possibilities of getting the money from the conventional mortgage lender, or even sometimes in the market. We like to back up our appraisal

of this a little bit by charging a higher rate, so that they will have every incentive to go elsewhere if they can.

Senator MacKenzie: You get your money from the Bank of Canada?

Mr. Beattie: Yes. Perhaps I might just finish my point?

The Acting Chairman: If the witness is allowed to make his statement—perhaps he is about to deal with some of these matters—although the questions are very interesting, we could come back to them when we have heard what the witness wishes to say.

Mr. Beattie: I would like to finish on the point of the interest rate, Mr. Chairman. The higher interest rate on larger loans is quite important from the point of view of helping to carry the overhead of making the smaller loans. Clearly, at 8 per cent you cannot cover the cost of making a loan of \$10,000, \$15,000 or \$25,000 when you are having to pay well over 6 per cent for the money which you borrowed. These larger loans, for relatively larger amounts, at the higher interest rate, do help to do that. They also help to make sure that the prospective borrower has made a very serious effort to get the money elsewhere, before he comes to us.

Senator Croll: May I, at this point, ask a question? You said that over \$350,000 the rate is 9 per cent and up. What is "up"? How high is "up"?

Mr. Beattie: Incidentally, the very larger loans are dealt with by the executive committee, or have to be dealt with finally by the executive committee or by the full board of the I.D.B. itself. Such loans are very few in number, so each one is considered as an individual case. I think the highest rate that we have charged is $9\frac{1}{4}$ per cent.

Senator Croll: Well, $9\frac{1}{4}$.

Mr. Beattie: That is a very recent one.

Senator Croll: You were talking about small loans. You are getting $8\frac{1}{2}$ and paying 6?

Mr. Beattie: 8, sir.

Senator Croll: You are getting 8 and paying 6.

Mr. Beattie: We are paying a little over 6, actually. I have here the latest schedule of borrowing costs, it averages out to 6.6 per cent.

Senator Croll: If it is 6.6, you have got a point and a half there?

Mr. Beattie: Yes.

Senator Croll: Can you not do business at that? Is a point and a half not giving a very good return?

Mr. Beattie: Not on a \$25,000 loan. Half of our loans are that size or smaller.

Senator Rattenbury: It would probably cost more for a smaller loan than it would for a larger one.

Mr. Beattie: It would certainly not be proportional to the size of the loan. A 2 per cent average spread over the life of the loan would be only \$250 a year. Bearing in mind that these loans are by definition, by injunction of Parliament, riskier loans than private institutions make, and, therefore, have to be investigated with some care, if the bank is going to be able to pay its way without being a burden on the Consolidated Revenue Fund, it is not a large amount.

Senator Croll: Mr. Beattie, you speak of riskier loans, but you started by telling us about a figure of \$7.5 million that you set aside for reserves and which you said was less than was normally set aside by the bank.

Mr. Beattie: That is right. The provision for losses is a smaller percentage. It is 1.9 per cent of the amount of money we have outstanding and committed. The chartered banks are permitted under the law to carry reserves for losses on risk assets of well over 3 per cent, and trust and loan companies are permitted to carry 3 per cent against mortgages. So we are cutting it finer than they are, if they use the full leeway that is permitted in their acts.

Senator Croll: There was a responsible suggestion on the floor of the Senate yesterday that you were not taking enough risks in your position as lender of last resource. It was suggested that you were not taking enough risks in order to be helpful to these industries that require assistance. That was the suggestion, and I thought it was a responsible one, myself.

Mr. Beattie: Certainly, I take it as a serious comment on the I.D.B. The most effective way of responding, I think, would be for you to see the summaries of the 45 or 50 loans

that go through each week and judge for yourself whether we are being overly cautious or not. I think you would find quite a few in there that would make you a little bit nervous, if you were the man who had made them and whose reputation within the organization depended on his record.

We are continually trying to sail closer and closer to the wind, but we also have to take account of the fact that we are supposed to be self-supporting. We are not handing out Government money, nor do we want to be dependent upon subsidies. And, of course, to set up larger provision for losses than that, we would have to have larger net earnings. The provision for losses is at that level because that is all that the net earnings we have made so far permitted.

The Acting Chairman: Senators Carter, Cook, Molson and Lang have signalled to me that they would like to ask questions. Again I raise the question as to whether the committee wants to proceed with this questioning or whether it would prefer the witness to proceed with his statement and hold its questions until he is through. I think it would be better to let him make his statement and then come back with the questions in the order that I have mentioned.

Senator Rattenbury: Would you add my name there, Mr. Chairman?

Senator McDonald: And mine too, Mr. Chairman.

The Acting Chairman: Yes. There, Mr. Beattie, you have clear sailing—whether close to the wind or not.

Mr. Beattie: The only other point I wanted to refer to, and partly because I understand that a question was raised about it yesterday, is that the proposal for an increase in the financial resources available to the I.D.B. comes in two parts. First of all, there is an increase in the authorized capital from \$50 million to \$75 million. Since the capital was last increased to \$50 million, in 1961, the volume of business of the I.D.B. has grown by more than 50 per cent so that the \$75 million authorized capital that is proposed now seems reasonable enough on that basis. The other reason for feeling that it would be desirable to have increased capital is that at some stage, when the organization is better known and has established what it can do, it would be the hope of many connected with it

that it would be able to borrow in the market as well as from the Bank of Canada, and perhaps replace the borrowing from the Bank of Canada with market borrowing, and for that purpose a balance sheet with adequate shareholder equity would be a very desirable thing.

The other part of the increase in resources available is a proposal to increase from five to ten the ratio of debenture borrowing to capital and reserves. The ratio that is permitted to federally-incorporated trust and loan companies is 15. So it was felt that ten was not an out-of-the-way ratio and would be consistent with maintaining an image of the I.D.B. which in due course might permit of borrowing in the market.

I do not want to make the possibility of borrowing in the market seem like a very imminent or urgent thing, but the act is not changed very frequently and it seemed wise to have this range of considerations in mind when the proposals were being put forward. I think that is all that I have to say.

The Acting Chairman: Thank you, Mr. Beattie. Senator Carter, you are first.

Senator Carter: Mr. Chairman I have some questions on the bank's policy with respect to working capital, but before I come to these I would like to follow on Senator Croll's line of questioning about the amount of risk that the bank takes.

Now, your report says that around the end of last year you carried out a decentralization program.

Mr. Beattie: Yes.

Senator Carter: And between then and the end of the year your report shows that for 1967, for that year, you made fewer loans and the total of the amounts of loans was also lower than in previous years. I was just wondering whether because you have decentralized, and the decisions are now being made by the branch managers, whether these branch managers have become perhaps a little more cautious than would have been the case previously.

Mr. Beattie: Well, Senator Carter, I think the small drop in the number and amount of loans provided in fiscal 1967 in comparison with 1966 is attributable mainly to less buoyant-looking conditions in the kinds of businesses where most of our borrowers are operating.

There is another factor which I should probably mention and that is that there was a major extension in the coverage of the act back in 1961, and it has taken several years to pick up the backlog of businesses which at that time became eligible to borrow from the I.D.B. You might think that it is a long time between 1961 and 1966, but we find that it is quite difficult to make sure that everybody who is eligible to borrow from the I.D.B. knows that the I.D.B. exists or that it is there to do a job. It takes time for the news to get around, for people to make their plans and to get in and make applications and for the applications to be approved.

So there was something of a bulge in lending going on in the years after 1961, and I think that might even have been affecting the figures for 1966.

Currently, in the last few months, approvals have begun to rise above the year-ago level again. And I think that the volume of business will be found to expand in the year ahead. I am quite sure myself that the decentralization program has not had any inhibiting effect on the amount of lending. Managers are anxious to show what a good job they can do. There is a real desire throughout the organization to do as good a job as we can within the terms which the act gives us.

Senator Carter: My main interest is in your policy with respect to working capital. I see from your report that last year 9 per cent of the amount of loans was for working capital as compared with 10 per cent the year before and 13 per cent the year before that again, so there seems to be a downward trend in loans for working capital, and that 9 per cent was not only a smaller percentage, but it was also a smaller percentage of a smaller total amount because the total amount of loans last year was less than in the previous year. I am from the Maritimes, from Newfoundland, and our economy is such that we are dependent on small enterprises. It is much better for us to have five small enterprises with 20 people each than to have one with 100 people, and usually these small enterprises are developed by people with initiative and experience who pull themselves up by their own bootstraps, but they have little or no previous experience with banks.

Very often there is no chartered bank available to them or even within easy access and it seems to be that your bank, the

Industrial Development Bank, has a special responsibility towards this type of enterprise particularly in an area that is economically retarded, and this downward trend rather disturbs me. It may be that the whole 9 per cent total of loans was made entirely in the Maritime provinces. If so, that is fine. But I don't know that that is the case, so I want to find out. What percentage of these loans was made in each of the provinces of Newfoundland, Nova Scotia, New Brunswick and Prince Edward Island, and what would be the amount of loans, or the number of loans in each case and the amount?

The Acting Chairman: You mean with particular reference to working capital loans?

Senator Carter: In that particular classification of loan.

Mr. Beattie: Well, Senator Carter, this 9 per cent is related to the total program of borrowers, and that total of borrowers' programs was substantially greater than the amount of money we loaned to them, but this is the only way we can describe statistically the kind of thing the I.D.B. is financing with its loans. That 9 per cent for increase in working capital is spread throughout the great bulk of the loans. What this means really is that the basic purpose of our loans is to finance expansion in capital equipment, in the forms of land, buildings and machinery and that some element of increase in working capital will often be associated with a loan. We comparatively seldom make a loan purely for working capital.

Senator Carter: That is what I wanted to get at and you have confirmed my worst fears. The working capital is mixed up with loans for other purposes. What you have segregated and listed as 9 per cent of the loans is 9 per cent of the loans which included other purposes in addition to working capital and not just working capital alone. Therefore the fellow who has a capital investment and who is in difficulty because he needs working capital urgently—as far as I have been able to find out from the operations of your bank you are scared of making a loan to cover that situation which is the greatest need of many small enterprises in my area. Yet that is the one need that you people shy away from.

Mr. Beattie: We recognize the need but this kind of working capital loan on section 88 security, inventories and receivables, is the

kind of loan where as you know if you are to manage it successfully it is important to be in pretty close touch with the borrower. Ideally you need to be in touch with him every couple of weeks or every month or even oftener the way the chartered bank keeps in touch with its customers who are being financed in this manner. We have only 28 branches across the country. Regrettably we have only one in Newfoundland. It would be quite impossible, I am afraid, for us to keep in touch with the people who had working capital loans from us in the way we should in order to manage that kind of business properly and successfully. Occasionally we do get into this field, mainly by guaranteeing the working capital advance of a chartered bank. That is a very occasional occurrence, but, you see, we simply do not have the physical facilities to manage a lending operation of that kind properly. Our lending operation in some ways is a more risky one, but it is based on a mortgage of physical security. Of course we have to be satisfied with the management too because the management is by all odds the most important aspect of any loan proposal. But inventory and receivables are coming in and going out from day to day and in order to keep track of that kind of picture you have to be near the borrower.

Senator Carter: May I interpret what you said as meaning that you make no loans at all for working capital?

Mr. Beattie: We have made a few. I cannot recall the number offhand, but for working capital alone it would not be a case of tens or scores of them. We are more conscious now than we were formerly of our inability physically to cope with this kind of operation where you have to know what has happened to the man's receivables and inventories from week to week.

Senator Pearson: Supplementary to that question, would it be possible, as Senator Carter says—take the example of a business which is all set up but they have no capital. Would it not be possible for this Industrial Development Bank to take over the assets and give a loan on the assets and release the man's capital so he can go and work.

Mr. Beattie: That is what does happen very often, as a matter of fact. Quite a typical case is a man coming to us with a depleted working capital which has been depleted because he has been spending money on land

or buildings or plant or equipment, and we look at the depletion and at the use he has made of the money he had in assessing the loan, and, of course, we need to take a mortgage on his fixed assets and equipment as security for our loan. But working capital does enter very frequently in that way, and we will restore a working capital which has been depleted by capital expenditures. But as for working capital accommodation *per se*, the security for which is inventories or receivables, that is really a bit outside our line of country. We find we cannot do that very often, with the branch and physical facilities that we have.

Senator Carter: Can you give me any breakdown at all of that 9 per cent, as to the various provinces? Have you the figures?

The Acting Chairman: On loans purely for working capital, not secured by plant and equipment?

Senator Carter: No. He has just told us it is mixed up with loans for other purposes, but I would like to know how much of that even gets down to the Maritimes.

Mr. Beattie: I do not have it available, but it could be tabulated. It is 9 per cent of \$167 million, as you will see from the report, whereas the actual loans approved were \$113 million. In other words, the program against which we made the loans of \$113 million totalled \$167, and 9 per cent of that is for either restoration or increase of working capital. In many cases the restoration would have been against depletion caused by capital expenditures.

The Acting Chairman: Would it be satisfactory if the witness gets the answer to your question, which will be sent to you and also to me, as chairman of the committee?

Senator Carter: Yes, Mr. Chairman.

Senator Pouliot: Mr. Chairman, ...

The Acting Chairman: Senator Pouliot, I have quite a list of senators who wish to ask questions ahead of you.

Senator Pouliot: Well, Mr. Chairman, I have just one question...

The Acting Chairman: Would you like me to put you at the bottom of the list?

Senator Pouliot: No, Mr. Chairman, but I will tell you...

The Chairman: Will the other honourable senators allow Senator Pouliot to go ahead of them?

Hon. Senators: Agreed.

Senator Pouliot: No, Mr. Chairman, I do not want to do that, but I will tell you what I wanted to know, and then, if the witness is kind enough to answer later, that will be all right. It is the relations between the Industrial Development Bank and the Department of Trade and Commerce of the Province of Quebec. I am not in a hurry.

The Acting Chairman: If it is a question that can be easily answered, if the other senators would be willing...

Senator Pouliot: I do not want to go ahead of anyone.

The Acting Chairman: Senator Cook?

Senator Cook: There is no restriction on the security the bank can get, first?

Mr. Beattie: No, I do not think so, except the limitations of our physical capacity to look after it.

Senator Cook: When you make a non-current loan at a high rate, are you able to impose any penalties against early repayment of a loan?

Mr. Beattie: Well, we do not like to call it a "penalty."

Senator Cook: Restrictions?

Mr. Beattie: No. This is the point, there is no restriction on early repayment, but when the repayment takes place in the early years of the loan we do charge an indemnity, the purpose of which is to help cover the cost of investigation, because the I.D.B. does not charge any investigation fee or any other kind of fee to the borrower for putting the loan on its books. It engages in an act of faith, if you like, which in many cases involves a lot of expense, and charging a prepayment fee is almost a universal practice among mortgage lenders where they do permit prepayment at all. Many do not allow it in the very early years, but where it is permitted it is almost invariable that they charge some kind of a fee for this privilege.

Senator Cook: But you do permit prepayment at any time?

Mr. Beattie: We do permit prepayment. We do charge an indemnity within the first five or six years.

Senator Cook: Does the bank at the same time insist upon a share of the equity? When they lend money to a concern which they feel has promise, do they make it a condition of the loan that the company must sell the bank some of its equity stock?

Mr. Beattie: We do on very rare occasions, and this is almost entirely confined to the very large loans. In that connection, it operates a bit in the same way as the higher interest rate. It helps us to assure ourselves that the enterprise concerned cannot get the money elsewhere on reasonable terms and conditions, as is specified in the act.

Senator Cook: Sometimes you are kind of hard to love.

Mr. Beattie: We do not do this very frequently. I would say the number of cases in which we have held equity out of the 14,000 odd borrowers to whom we made loans would not be more than 40 or 50, and they relate almost entirely large or even very large loans.

Senator Molson: I would like to ask just three short questions, Mr. Chairman. I would like to refer to the balance sheet. There are only a couple of minor points here. In the balance sheet of the I.D.B. the reserve fund is the fund which in the case of a chartered bank is called the rest account.

Mr. Beattie: It is undistributed net income.

Senator Molson: In the case of this bank the loan ratio is extraordinarily high, but this is because you have no deposit liabilities?

Mr. Beattie: That is right, we have no liabilities to the public.

Senator Molson: So, there is no reason why it should not be as high as it is, for that reason?

Mr. Beattie: No, the sole business of the bank is to make loans with particular reference to small business. The term of the borrowing that the I.D.B. does from the Bank of Canada, or perhaps at some future time from the market, would be geared to the average maturity of its loans, so you would have an equivalence between your assets and liabilities so far as the term of maturity is concerned.

Senator Molson: Two other questions. Have you specific reserves set up against loans? I do not see any charge in the income and expense account. The chartered banks, we know, have specific reserves, but I assume you have not.

Mr. Beattie: A reserve for loans, that is the third-last item on the liability side, would correspond to the reserves a chartered bank or trust or loan company would set up. That now amounts to \$7½ million.

Senator Molson: But those being in round-house figures probably are not specific reserves.

Mr. Beattie: They are not allocated to specific, individual accounts, because our experience has been—and I am sure this is true of any lending institution—that quite a few of the losses actually incurred you do not perceive until a few months or weeks before they happen, but you know always you have an exposure to losses in accounts where things may look perfectly all right at the moment. One of the things you have to allow for is the development of unfavourable conditions in the economy generally, although recently not so much of that, but particularly in individual industries, and sometimes these things can happen rather quickly.

Senator Molson: If you have a specific account, which must occur fairly frequently, which becomes doubtful, do you allocate your reserve as a result of that, or do you always deal in general reserves?

Mr. Beattie: We make a very careful examination of all the accounts on the books twice a year, to separate out the ones which on various criteria could be regarded as unsatisfactory, and try to estimate the losses that we can foresee in that particular account; but we do not regard that as the whole story, because, as I have just mentioned, many of the losses you actually incur you are not able to foresee very far in advance of the time the development occurs that crystallizes the loss. The \$7½ million is general, but it is made after a very careful examination of all the analyses you can make of accounts that are in arrears or in which there are other unsatisfactory developments occurring. It is a very businesslike procedure, I assure you, in setting up that reserve for losses.

Senator Molson: I do not question that. I am simply pointing out that the method is a little different from that of the chartered banks in this regard.

Mr. Beattie: Yes. I am not familiar with how they would go about it.

Senator Molson: They would have a specific reserve on accounts that go from good to questionable for any one of the reasons you mentioned, and this would be in addition to the general reserves for loans. There is a slight difference in that respect.

Mr. Beattie: I see. Out of the \$7.5 million a certain amount is notionally allotted to specific accounts, but there is a margin above that which we feel should be kept. As I mentioned before, this \$7.5 million, as a ratio of the total amount we have outstanding plus the undisbursed commitments, is, I think 1.9 per cent, which is lower than that which lending institutions who are in perhaps less risky business than we are, can carry. I suspect we would have a higher ratio if we had been able to generate a higher net income—if the costs of investigation had not proved to be fairly heavy.

Senator Molson: I have just one other question, Mr. Chairman. Does the bank ask for any offsetting balance in any case?

Mr. Beattie: No. Perhaps I should elaborate on that a little bit. We do not really perform any services for the client other than making him a mortgage loan. We do not cash his cheques, or look after his clearings, or perform all of the various services that a chartered bank customer naturally expects to have supplied to him. It is purely a lending proposition, and the interest rate is the sum total of the charge he has to pay.

Senator Lang: My question arises out of a remark Mr. Beattie made previously. I have a suspicion that the general unpopularity of the I.D.B.—and I do not think I overstate it—amongst the borrowing public in Canada may be attributable to the fact that it is not equipped to make loans under what normally would be a section 88 security, but is in the rather fortunate position, by virtue of its system, of making loans on fixed securities. If that is the case, why would not the bank extend greatly the facility of its credit through guaranteeing a normal section 88 loan at a normal chartered bank, and let that bank service that loan? In other words, why

can it not create a branch system underneath the normal banking branch system? I would suggest that if this was your practice a lot of the criticism directed towards the I.D.B. by the borrowers would disappear.

Mr. Beattie: Well, as I say, we have in a few cases guaranteed chartered bank loans, but for that, of course, we would have to charge a fee which presumably the borrower would have to pay. He is not usually very enthusiastic about that.

But, I think the main reason why we have not done very much of this business is because the country is pretty well supplied with chartered banking service—that is, a working capital lending service. The branch system is very widespread. There is a good deal of competition between banks for this kind of business.

Certainly at the time that the Industrial Development Bank was set up back in 1944 it was thought that if there was a gap in the amount of financing available to small businesses then it was very much more noticeable in the field of medium term loans and mortgage loans than it was in the case of working capital accommodation. I think there must be comparatively few areas or lines of business that are not pretty well serviced by the chartered banking accommodation.

Now, we are willing to consider propositions of this sort, and we have engaged in some of them, but our experience has been that normally a creditworthy borrower can get his loan from the chartered bank—that is, his working capital loan—without paying us an additional fee to guarantee it.

The Acting Chairman: But if he is turned down by the chartered bank, does the chartered bank know that the Industrial Development Bank might be prepared to step in on the basis that Senator Lang has mentioned?

Mr. Beattie: Yes, they do know that. We spoke about this when we appeared before the Porter Commission. This is certainly a matter of public knowledge. As I say, we have engaged in enough cases of this sort so that many of the banks would know that we actually do it on occasion. It is a matter of a demand for our service rather than our willingness to supply it.

Senator Rattenbury: My question, Mr. Chairman, concerns the time limit on loans. Is there a time limit for repayment?

Mr. Beattie: Yes, there is always a term to the loan, and the loans are all payable usually by months through the year, but in the case of a very seasonal business there will be a moratorium during the off season. But, the repayment schedule is made up in such a way that it should be within the capacity of the business to meet it. We feel it is desirable to have payments coming in currently because that keeps the man on his toes, and it also gives us an idea of whether anything is going wrong quite early in the game. If something is going wrong we can go and have a look at it, and do what we can to help the man to correct it.

Senator Rattenbury: Is there a time limit on the number of years within which it must be paid?

Mr. Beattie: There is no absolute limit to the term. The normal term would range between five and ten years, but we have certainly made loans for as long as 15 years. There is no theoretical or prescribed limit. There is no absolute outer limit at all. It is a matter of judgment in respect of each individual account.

Senator Rattenbury: I recall one instance down in my province of New Brunswick several years ago, and I wondered whether there has been a change in the policy. Several years ago a very old and well-established firm in New Brunswick, and one of the better firms in the field, approached your bank for a loan of \$500,000. I understand the loan was approved, but it had to be repaid in ten years. The firm in question said: "Well, we cannot repay it in ten years because the interim payments will be too steep for us." So, on this basis, I understand, the loan was refused, and the firm in question went to the market place with a bond issue which was snapped up just like that, because of their record of being good operators of the business. But, the term is still five or ten years; is that right?

Mr. Beattie: I am not familiar . . .

Senator Rattenbury: The bank itself was criticized at that time for turning this particular firm down. They had such a high reputation.

Mr. Beattie: Well, the fact that it was able to put out a market issue is proof that they were outside our constituency under the law. But, I dare say one of the considerations

might have been that the business was capable of paying off a loan from the I.D.B. in ten years, and it was our judgment that it would be desirable for them to do so. It really would not be proper, I think, for the I.D.B. to make a very long term loan to a business which did not need that long a term in relation to its cash flow.

Senator Rattenbury: If the firm in question did need it from the I.D.B. However, I have another question following on from Senator Carter's remarks on Newfoundland, and to a great extent a similar situation applies in New Brunswick. One of the criticisms I frequently hear from prospective borrowers is that a person looking for a loan for assistance from the I.D.B. needs the services of a lawyer—of course, it is good for the lawyers—and a chartered accountant to prepare the submission for the loan. Is there any easing of that situation now from what it used to be? Quite frankly, I do not have as many of these questions put to me now as I did.

Mr. Beattie: I do not think it is necessary to have a lawyer or a chartered accountant to prepare the submission, but if an application is to be considered and approved we would certainly need accounting statements to be able to judge the creditworthiness of the business.

Senator Rattenbury: Your investigators could not do that for you in the case of a small business for a small loan?

Mr. Beattie: Every business really needs to have some kind of accounting system.

Senator Rattenbury: But every business cannot pay a chartered accountant.

Mr. Beattie: They need some kind of accounting system to keep track of what is happening. Cases where accounting statements are not available are increasingly rare, I think. We do not require the accountant to come along to make the submission. Presumably, and desirably, the head of the business knows enough about his business to be able to do it much better than an accountant.

Senator Rattenbury: I would think so.

Mr. Beattie: If you are taking mortgage security it has to be drawn by a lawyer to be valid, but that is the only extent to which the use of a lawyer is necessary. It is certainly

not necessary in putting forward the application.

Senator Rattenbury: But it does happen frequently, does it not? Or are you aware that it does?

Mr. Beattie: It sometimes does. If a lawyer is one of the directors or very close to the business he may be the man who can most easily do it, but there is no requirement on our part.

Senator Cook: He may be helpful at all stages.

Senator Molson: They always get their cut.

Senator Rattenbury: I do not know if you have the answer to this question, which is a matter of interest to me personally. I notice a paucity of loans to do with the construction industry. Is the reason for that because of the high risk, or is it lack of applications?

Mr. Beattie: I was not aware that there was a paucity. I know I see loans to construction companies going through week by week. In the last fiscal year 130 loans were made for a total of \$5 million.

Senator Rattenbury: It is page 6.

Mr. Beattie: I am sorry. I am looking at pages 16 and 17.

Senator Rattenbury: "Detailed classification of loan approval by type of business."

Mr. Beattie: I think that is a percentage of the total, but the absolute figures are given on page 17, near the middle of the table, where you see that for the last six fiscal years the number of loans has ranged from 117 to 159; it was 130 last year; the amount has ranged from \$3.9 million to \$6.6 million, and it was \$5 million last year.

Senator Rattenbury: I had overlooked that table. Thank you, Mr. Beattie.

Senator McDonald: I notice that there are no directors of your bank for the Province of Saskatchewan. It is the only province in Canada that does not have a director.

Mr. Beattie: This is the result of circumstances. Mr. Arthur Child, when he was appointed a director of the Bank of Canada and the Industrial Development Bank, was resident in Saskatoon, but about a year later he moved to Calgary. I might say in this regard that the nature of Mr. Child's new

connection is such that he travels a great deal in the Province of Saskatchewan and is still very familiar with conditions there.

Senator McDonald: I know Mr. Child personally, and know him very well. It is about two years since Mr. Child went to Calgary, and with all due respect I think that the Province of Saskatchewan is entitled to a director who lives and works in the Province of Saskatchewan. It is my hope that this situation can be changed. There are people in Saskatchewan who would very much like to have access to a director. When there is no director living in the province this is not possible, and I would very much like to see a change made so that our people who are interested would have access to a director without having to trouble to go to Calgary, Winnipeg or some other part of Canada. I hope that you will make representations to the powers that be.

Mr. Beattie: The Governor in Council appoints the directors of the bank under the act. The term of our directors' appointment is three years.

Senator McDonald: When your bank has approved a loan and in the interval the borrower has decided he does not need the funds immediately, is any charge imposed by your bank, a surcharge?

Mr. Beattie: Yes, in some cases, particularly with the larger loans. If the applicant has had his application approved, has accepted the loan and later cancels, a commitment fee of two per cent or a minimum of \$50 is charged. This is to recompense us for the work we have done which will bring no revenue at all. Going beyond that, when a loan is approved a target date by which the disbursement will have taken place is set; it will be quite a number of months after the approval date, because it takes time to take the security and get all the details of the security ironed out. It will normally be four, five or six months. If the security has not been completed or the disbursements have not been made by that date, then a standby charge at the rate of two per cent per annum is made after that time. Normally the fact that a loan has not been disbursed is really attributable to the borrower; usually it arises out of delay in providing the security. Again the I.D.B. is carrying a commitment without getting any return on it.

The Acting Chairman: This is a flat charge?

Mr. Beattie: It is a percentage charge on undisbursed commitments over \$25,000 outstanding from time to time.

Senator McDonald: Suppose you have made a loan and have a mortgage on the land and equipment, you find the loan has gone bad and you want to close it out, you foreclose and dispose of the land and equipment. If you get a price much in excess of the balance of the loan owing what happens to the difference? Suppose you have made a loan of \$250,000 and sell the security out for \$500,000, what happens to the balance of \$250,000, the profit?

Mr. Beattie: I do not think such a case has ever happened.

Senator McDonald: You have one that is going to happen.

Mr. Beattie: If that is the case surely the borrower ought to sell the property first.

Senator McDonald: He is in a position where he cannot sell because of other indebtedness.

Senator Cook: He had better have a lawyer.

Senator Rattenbury: Are you working hard this morning?

Senator McDonald: That is why he is in trouble. Is there any provision? You have had no experience in this area?

Mr. Beattie: I do not think the problem has come up yet. I could not give a categorical answer.

The Acting Chairman: Where it is done under a power of sale or closure.

Senator Flynn: The surplus will be limited to the borrower. If the bank takes the property, either by way of donation or payment, it is entitled then to keep the surplus. It might not be in all fairness, but they might legally do it.

Mr. Beattie: I cannot recall a case where we have taken over the property and have not had to make a write-off in the end.

Senator McDonald: That is normal.

The Acting Chairman: Senator Flynn is next. Senator Pouliot has left his questions

with me. Senator McCutcheon has had questions and he is not here. Perhaps they should be put in some way to the witness.

Senator Flynn: My first question is supplementary to that by Senator Carter. The I.D.B. is considered as a bank of last resort, that is, when other sources are not available. Would you say it should be so, where other sources are not available, that is when the chartered banks have no facilities, such as in isolated areas, without such facilities as you find elsewhere?

Mr. Beattie: In such areas of course by definition we would be still less capable of being adequately represented. We do have people who make trips periodically into such areas, including the Yukon and the Northwest Territories, and we have a certain amount of business there. I think it is fair to say that in very remote areas of that sort, as well as in designated areas or areas of slower growth, our people do try even harder to find a basis for making a loan, than would normally be the case. They try very hard to deal with this.

Senator Flynn: The answer is yes, you try to supplement in the isolated areas?

Mr. Beattie: As best we can, with the physical resources we have.

Senator Flynn: My second question is this. How do your losses compare with the losses of chartered banks, proportionately?

Mr. Beattie: I am afraid I cannot answer that question offhand—partly because I am not sure that I would have equally comprehensive information about what the chartered banks losses have been as compared with ours.

The record of losses is on page 28 of our annual report. Have you a copy there, Senator Flynn? You will see, about two-thirds of the way down the page, a figure for bad debts written off. We do not write debts off until we have made an awfully hard try to recover the situation and allow the original owner to go along with the business and eventually make a success of it.

Senator Flynn: My question really was whether the bank was making too much money in the light of its purpose, to be a bank of last resort. Do you figure that you are accomplishing generally what you were created for?

Mr. Beattie: All I can say is that I think we are operating about as close to the wind as we should, bearing in mind that we are expected to be self-supporting. The act, and the discussion in Parliament at the time the act was passed, indicate the intention that the bank would not be drawing on Government funds, that it would earn enough to cover its losses. As I say, the reserve for losses that we have set up, of \$7½ million, is appreciably less as a percentage than the loss which the chartered banks or federal trust or loan companies are empowered to set aside, under their legislation. If we were to take on business that was virtually certain to throw off much greater losses, I think we would need to have a larger spread between the lending rates and the borrowing rates. Virtually all our income is going into reserve for losses, and in my opinion the reserve for losses is not excessive.

The Acting Chairman: You have no profit tax and you pay no dividends?

Mr. Beattie: That is right. We are not subject to income tax and we have paid no dividends.

The Acting Chairman: If you tried to pay dividends, the picture would in effect show no profit on the operation?

Mr. Beattie: The taxes payable would be pretty small, if we had the same leeway to charge off provision for losses that private lenders have. There would be very little left.

The Acting Chairman: There is an indirect subsidy in the operation, to the extent that there is no dividend?

Mr. Beattie: The dividend on the capital, or the return on the capital, is low; but a full rate, comparable to the market rate, is paid on the borrowings, the debenture borrowings of the I.D.B.

The Acting Chairman: If I may paraphrase Senator McCutcheon's question—I think Mr. Beattie is familiar with what Senator McCutcheon said—the senator wishes to know whether the large increase in the capital, or at least in the borrowing and lending ability of the bank, might infer a change in lending policy—either by making more risk loans or perhaps by going into a field that was more normally the field for ordinary banking—that the broadening of this field might result in a greater number of

loans. He would ask if that is one purpose of the increase in the ability of the bank to have funds for lending purposes.

Is that what was in Senator McCutcheon's mind—in regard to the very substantial increase at the present time? Does it foreshadow any change in the pattern of lending?

Mr. Beattie: Not so far as I am aware—subject to the comment I made earlier, that we are continuously experimenting at the margin of risk in the business we are in now. We are steadily trying to take on slight additional degrees of risk, getting our loans out, seeing how it works and, if it works, pushing a little more. There is a process of a gradual extension of risk, but that has been going on for fifteen years at least, and there is no radical change there.

As for competition with private lenders, we are debarred from that by the act and we take that limitation or inhibition very seriously and try to implement it very conscientiously.

Senator Rattenbury: Mr. Chairman, would a motion to report the bill be in order?

The Acting Chairman: Just a minute, with your indulgence. There is Senator Pouliot's

question, which he left with me: "Are there any relations between the Industrial Development Bank and the Department of Trade and Commerce of Quebec?" And, secondly: "If so, what are they?"

Mr. Beattie: There are no official relations, I am sure. In the case of the federal Department of Trade and Commerce, the deputy minister is a member of the board of the I.D.B., but we have no direct official relations with the Quebec department. We are always anxious to keep in contact with them, and, if they have any customers that they think are eligible for and need the services of the I.D.B., we are always glad to have that information, and, if there is any industrial information that they can give us about conditions in Quebec, we are happy to have that too. We would like to have just as close a working relationship with them as possible, but there is nothing official or prescribed about it.

The Acting Chairman: Thank you, Mr. Beattie, on behalf of the committee for your usual good information. Shall we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 22

Third and Final Proceedings on Bill S-22,
intituled:

"An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code".

WEDNESDAY, JANUARY 24th, 1968

WITNESSES:

Department of National Health and Welfare: Dr. R. A. Chapman, Director-General, Food and Drug Directorate; J. D. McCarthy, Legal Adviser.

Canadian Paint Manufacturers Association: Eric Barry, Executive Vice-President; J. M. Coyne, Q.C., Parliamentary Agent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Paterson
Aseltine	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Roebuck
Bourget	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Burchill	Lang	Thorvaldson
Choquette	Leonard	Vaillancourt
Cook	Macdonald (<i>Cape Breton</i>)	Vien
Croll	MacKenzie	Walker
Dessureault	Macnaughton	White
Everett	McCutcheon	Willis—(45).
Farris	McDonald	
Fergusson	Molson	
Gélinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, November 6th, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Basha, for the second reading of Bill S-22, intituled: "An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator McGrand, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, January 24th, 1968.

(23)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Blois, Fergusson, Gershaw, Irvine, Leonard, MacKenzie, Macnaughton, McDonald, Molson and Thorvaldson—(12).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of the Committees.

After discussion, and on motion of the Honourable Senator Molson it was *Resolved* that the Committee report as follows:

Your Committee recommends that the witnesses, who, upon request of the Committee, appeared and gave evidence before it at the meeting held on Wednesday, December 6th, 1967, to consider Bill S-21, "An Act to amend the Food and Drugs Act", be paid fees and expenses as follows: Dr. L. P. Solursh \$161.50 and Dr. E. F. W. Baker, \$200.00.

Bill S-22, "Hazardous Substances Act", was further considered.

The following witnesses were heard:

Department of National Health and Welfare:

Dr. R. A. Chapman, Director-General, Food and Drug Directorate.

J. D. McCarthy, Legal Adviser.

Canadian Paint Manufacturers Association:

Eric Barry, Executive Vice-President.

J. M. Coyne, Q.C., Parliamentary Counsel.

Amendments:

After discussion, amendments were made to clauses 2, 3, 4, 13 and 14, and to items 2 and 3 of Part I of the Schedule, which amendments fully appear by reference to the Report of the Committee immediately following these Minutes.

On motion of the Honourable Senator Macnaughton it was *Resolved* to report the said Bill as amended.

At 10.55 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, January 24th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-22, intitled: "An Act to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code", has in obedience to the order of reference of November 6th, 1967, examined the said Bill and now reports the same with the following amendments:

1. Page 1, line 10: Immediately after "disposition" insert "to the general public".

2. Page 2: Strike out clause 3 and substitute therefor the following:

"3. (1) No person shall advertise or sell a hazardous substance included in Part I of the Schedule.

(2) No person shall advertise or sell a hazardous substance included in Part II of the Schedule except as authorized by the regulations.

(3) Every person who violates subsection (1) or (2) is guilty of

(a) an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment; or

(b) an indictable offence and liable to imprisonment for two years.

(4) A prosecution under paragraph (a) of subsection (3) may be instituted at any time within twelve months after the time when the subject matter of the prosecution arose."

3. Page 2: Strike out clause 4 and substitute therefor the following:

"4. (1) The Minister may designate as a hazardous substance inspector any person on the staff of the Department of National Health and Welfare who, in his opinion, is qualified to act as an inspector.

(2) A person designated an inspector pursuant to subsection (1) shall act for such time as he is employed in the Department of National Health and Welfare or for such time during the period of such employment as the Minister may specify."

4. Page 7: Strike out clause 13 and substitute therefor the following:

"13. This Part does not apply to any substance or article that is

(a) an explosive within the meaning of the *Explosives Act*;

(b) a cosmetic, device, drug or food within the meaning of the *Food and Drugs Act*;

(c) a pest control product within the meaning of the *Pest Control Products Act*; or

(d) a prescribed substance within the meaning of the *Atomic Energy Control Act*.”.

5. *Page 7*: Strike out clause 14 and substitute therefor the following:

“14. Subsection (2) of section 3 shall come into force on a day to be fixed by proclamation.”.

6. *Page 8*: Strike out items 2 and 3 of Part I of the Schedule and substitute therefor the following:

“2. Furniture, toys and other articles intended for children, painted with a liquid coating material containing lead compounds of which the lead content (calculated as lead) is in excess of 0.50 per cent of the total weight of the contained solids, including pigments, film solids, and driers.

3. Liquid coating materials and paint and varnish removers for household use having a flashpoint of less than 0°F as determined by method 3.1 of Specification 1-GP-71 of the Canadian Government Specifications Board.”.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, January 24, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-22, to prohibit the sale and advertising of hazardous substances, to amend the Food and Drugs Act and the Narcotic Control Act and to make consequential amendment to the Criminal Code, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: I call the meeting to order.

We have before us this morning Bill S-22, and this is a continuation of our consideration of this bill. There were distributed to you yesterday the proposed amendments, and I should tell you that these amendments rise out of submissions that were made to this committee, particularly by the Canadian Paint Manufacturers Association. They were consulted in connection with the form and substance of the amendments. I understand that they are satisfactory, but some of the representatives are present this morning and if they have anything further to say then we can hear them.

Before we get down to that item of business I should like to mention that on the last day of the hearings in connection with Bill S-21—the LSD bill, as we referred to it—we heard two doctors from Toronto who came here to clarify—I will not use any other word—the atmosphere that was present after the hearings we had on the previous occasion with some other witnesses. We invited these doctors to come. It was not a case of their asking to come. We have now received accounts from them in respect of their fees and disbursements, and a resolution of this committee is necessary in order that those accounts be paid. The doctors were Dr. L. P. Solorsh and Dr. E. F. W. Baker, and it is proposed that we report to the Senate as follows:

Your committee recommends that the witnesses who, upon request of the committee, appeared and gave evidence before it at the meeting held on Wednesday, December 6th, 1957, to consider Bill

S-21, "An Act to amend the Food and Drugs Act", be paid fees and expenses as follows:

Dr. L. P. Solorsh	\$161.50
Dr. E. F. W. Baker	\$200.00

All of which is respectfully submitted.

Is it agreed that the committee makes this report to the Senate?

Hon. Senators: Agreed.

Senator Leonard: I suppose we cannot get OMSIP to pay for this?

The Chairman: No, I do not think so.

Senator Macnaughton: As a matter of interest, Mr. Chairman, do we not have a general authority to pay this money under the rules of the committee?

The Chairman: With respect to the standing committees the answer is no, but with respect to special committees then the answer is yes. We, being a standing committee, will have to incorporate it in a report to the Senate.

Senator Thorvaldson: Were those the gentlemen who came from the United States?

The Chairman: No, they were the ones who followed the gentlemen from the United States, if you see the difference and distinction I am making.

Senator Molson: Mr. Chairman, we are empowered to call them and to incur this expense, but then we must have the expense authorized?

The Chairman: Yes, although you must remember that in practice there have been very few occasions upon which we have actually called a witness in the sense that we have asked him to come and give evidence. All we have done is to invite groups of people who have expressed an interest, or people we thought might be interested, saying that the committee will be sitting on such and such a date, and if they wish to make any presentation or to be heard then the committee is prepared to hear them. But, that is different from inviting them to attend to deal with a particular situation, and that is what we did in this case. We invited these two doctors.

Hon. Senators: Agreed.

The Chairman: Now, getting back to Bill S-22, Dr. R. A. Chapman and Mr. J. D. McCarthy from the Department of National Health and Welfare are present, and I would ask them to come forward. The members of the committee have copies of the amendments that have been proposed, and as we go through them I will ask these two gentlemen to explain their purposes.

The first amendment proposed is to line 10, page 1 of the bill. Do you want to deal with this, Dr. Chapman?

J. D. McCarthy, Legal Adviser, Food and Drug Directorate, Department of National Health and Welfare: This change is made because it was deemed advisable to confine the control of advertising of a hazardous substance to instances where sale was intended to the general public. There are many circumstances under which the substances pass back and forth within the trade, which it was not intended to control in this way. It was the effect on the general public that was desired to be controlled by the additional words "to the general public".

The Chairman: If you look at clause 2 (a) you see the definition of "advertise". All that is done is to add the words "to the general public" after the word "disposition"?

Mr. McCarthy: That is right.

The Chairman: Senator Molson, I am sure you will find this definition of "advertise" very interesting in regard to the use of the word "promoting", having regard to certain things that were said when we were considering Bill S-21.

Senator Molson: I do find it very interesting. I am also a little puzzled as to why it was impossible to define this sort of thing in Bill S-21, whereas apparently it is quite easy to define it in Bill S-22.

The Chairman: Apparently the simple way is to say "promoting directly or indirectly". I cannot imagine anything broader than that.

Senator Molson: It is very interesting.

The Chairman: However, we will be watching for it next time.

Senator Leonard: Perhaps the witness might like to make a comment on that.

The Chairman: Mr. McCarthy was the witness last time who expressed concern about the problems that might arise if we used the word "promote" in the amendment suggested to Bill S-21. Mr. McCarthy, would you like to add something now in relation to its use here in this bill?

Mr. McCarthy: I am not sure that I would like to, Mr. Chairman.

The Chairman: Well, I am inviting you to.

Mr. McCarthy: In the other bill that we were discussing before, in my view anyway, it became very difficult to make an offence of promoting something unless you knew what "promoting" meant. This is not an offence here. The use of the word "promoting" here does not describe an offence, whereas it did in the LSD bill. This was basically our stumbling block in the other case where, because you are creating a criminal offence in promoting, it was almost necessary to define it, if it could be done.

The Chairman: You offer an interesting explanation, Mr. McCarthy. I agree that in criminal law the offence would be clearly defined, but I would think there should be some clarity, and adequate clarity, where you are defining the limit or scope of advertising. Here you say "promoting directly or indirectly", which is the broadest limit possible, is it not? We do not have any particular definition of "promoting", do we?

Mr. McCarthy: No, we do not here.

Senator Molson: I am a little puzzled too, because in clause 3, the offence clause, it says "No person shall advertise", and "advertise" is dealt with in the amendment we are now discussing. I therefore do not quite follow the witness in that respect. It is an offence.

The Chairman: If you do what is contained in the definition of "advertise" in clause 2(a) and then come to clause 3, in relation to substances included in Part I of the schedule it is an offence.

Senator Molson: Quite, which brings us back, if I may say so, full circle.

Mr. McCarthy: Oh no, I do not think so, with great respect, senator. I think the offence is advertising for the purpose of doing something. There was no advertising involved in the other instance. It was a case of promoting.

Senator Molson: We did not include "advertising" in the other bill. We could have had "advertising" but we were told it was not a wise thing to do.

Senator Leonard: I understand the other legislation will come back to us, although not immediately. Was there not something at which we were to have another look in a year or so?

The Chairman: No. You are thinking of amendments to the Canada Deposit Insurance Corporation bill.

Senator Leonard: That is right.

The Chairman: We tied that up in such a way that they will have to come back if they want to change the definition. I think we should add one of those little things on all these bills so that they will get back to us. We will be scheming to get you back on this, Mr. McCarthy. You have the explanation of the change to the first amendment proposed. Is that carried?

Hon. Senators: Carried.

The Chairman: The next amendment is on page 2, to strike out clause 3 and substitute therefor the following:

3. (1) No person shall advertise or sell a hazardous substance included in Part I of the Schedule.

(2) No person shall advertise or sell a hazardous substance included in Part II of the Schedule except as authorized by the regulations.

(3) Every person who violates subsection (1) or (2) is guilty of

(a) an offence and liable on summary conviction to a fine or one thousand dollars or to imprisonment for six months or to both fine and imprisonment; or

(b) an indictable offence and liable to imprisonment for two years.

(4) A prosecution under paragraph (a) of subsection (3) may be instituted at any time within twelve months after the time when the subject matter of the prosecution arose.

The changes there are what, Mr. McCarthy?

Mr. McCarthy: The basic change is in dividing the offence described in the bill as now printed of advertising or selling a haz-

ardous substance included in Part I of the schedule or, except as authorized under the authority of the regulations, in Part II, because it became necessary to divide these two offences into two parts, namely two parts of the schedule. We divided it into two subsections, one of which would come into effect immediately on the passing of this bill. Subsection (2), which had to do with Part II of the schedule, would be brought into effect on proclamation, because of the need for certain adjustments in the industry, and so on. In order to make these two effective dates distinct it is necessary to break the offence down into two distinct parts, one relating to Part I of the schedule and one relating to Part II.

The Chairman: As you have broken it down, will you make it clear that a prosecution under (a)—and that relates to Part I of the schedule?

Mr. McCarthy: Yes, sir.

The Chairman:—may be instituted at any time within twelve months. In other words, you have a statutory limit within which a prosecution may take place?

Mr. McCarthy: That is right, sir.

The Chairman: What have you done with respect to an offence under Part II of the schedule? You make it an offence to sell or advertise a hazardous substance included in Part II unless authorized by the regulations, and you can prosecute in relation to that at any time. Is that right?

Mr. McCarthy: After it becomes an offence. It would not become an offence until proclamation, bringing that part into effect.

The Chairman: Are there any questions on that?

Senator Leonard: At the last meeting we did have some discussion on whether or not articles could be moved by regulation from Part I of the schedule to Part II of the schedule and vice versa. Is there any change in that? Is it clear that you can move the articles by regulation?

Mr. McCarthy: Yet, it is quite clear, sir. There is authority in the bill by order in council to add to or delete from either part of the schedule.

The Chairman: In other words, you could cancel out an item in Part I and then put it in Part II?

Mr. McCarthy: That is right.

The Chairman: And you could also cancel it out in Part II and put it in Part I?

Mr. McCarthy: That is right.

The Chairman: All by order in council.

Senator Thorvaldson: That seems to be an amazing situation, that you can change an act by order in council.

The Chairman: You mean the sort of musical chairs?

Senator Thorvaldson: Is that not rather unusual, to say the least?

The Chairman: Except that you are dealing in an area where you are discovering new applications for a product almost daily and a new application may make the use of it a more serious and hazardous thing, so that you might want to put it in Part I when it may be in Part II. Is that not right?

Mr. McCarthy: That is right, sir.

The Chairman: I agree that ordinarily being able to move things around by order in council within the scope of legislation should have definite limits.

Senator Thorvaldson: I am referring to the principle of being able actually to amend legislation by order in council, because that is the effect of it. I doubt yet if it would stand up in a court of law.

The Chairman: Let us not argue on this, because I am inclined to think it would, if Parliament says so. Would you care to comment on that, Mr. McCarthy?

Mr. McCarthy: There are many instances of this type of legislation generally in our food and drug legislation. The Food and Drugs Act has five or six schedules containing different lists of drugs referred to in different parts of the act. There is also, of course, the Narcotics Control Act, which has a schedule to which any of these schedules can be added or subtracted by order in council, as changing conditions dictate and as the scheme provides. It is the current view—which I must say I feel is reasonable—that it would be quite cumbersome if, every time a substance needed to be added or taken away from one of these

schedules, it was necessary to come back to Parliament and get the schedule changed.

Senator Thorvaldson: I think we quite realize that, sir, but it is the principle of this type of thing that we are talking about.

The Chairman: It is very wise that we should ring a bell and say: "Now, this is a special case you have made out: we do not accept this as a general principle in legislation."

Is this amendment carried?

Hon. Senators: Agreed.

The Chairman: The next amendment is on page 2, to strike out clause 4 and substitute therefor the following:

4. (1) The Minister may designate as a hazardous substance inspector any person on the staff of the Department of National Health and Welfare who, in his opinion, is qualified to act as an inspector.

(2) A person designated an inspector pursuant to subsection (1) shall act for such time as he is employed in the Department of National Health and Welfare or for such time during the period of such employment as the Minister may specify.

What is the change there?

Mr. McCarthy: First of all, the clause has been divided into two parts, for convenience in drafting. In the first part a provision has been added that the person so appointed must be someone who, in the opinion of the minister, is qualified to act as an inspector. This was not in there before.

Senator Leonard: I think this is the point which was raised by the trade witnesses who appeared before us—whether or not an inspector would be a qualified person. Presumably this amendment is made to ensure that there would be a qualified person. My question is whether or not this amendment has been submitted to the witnesses who appeared, or the associations which were represented here, and whether those associations have accepted this or have stated that they are satisfied.

Mr. McCarthy: I believe it is. Is that right?

Dr. R. A. Chapman, Director-General, Food and Drug Directorate, Department of National Health and Welfare: Yes.

The Chairman: Did you see this amendment, Mr. Coyne?

Mr. J. M. Coyne Q.C. (Parliamentary Counsel, Canadian Paint Manufacturers' Association): This is not one of the points that our association made. I think it was made by the chemical people.

The Chairman: And they were in the discussions on this.

Senator Thorvaldson: I would like to remind you that I questioned, on second reading, the broadness of this section.

The Chairman: Yes, I know. Do you favour this qualifying provision?

Senator Thorvaldson: I agree with the change.

The Chairman: I would think it is a necessary change. Are you ready to approve the section?

Hon. Senators: Agreed.

The Chairman: It is approved.

The Chairman: The next amendment is in regard to clause 14, on page 7 of the bill. That clause reads at present:

This Part shall come into force on a day to be fixed by proclamation.

The amendment proposed is:

Page 7: Strike out clause 14 and substitute therefor the following:

"14. Subsection (2) of section 3 shall come into force on a day to be fixed by proclamation."

What is the reason for this, Mr. McCarthy?

Mr. McCarthy: It is in order to direct that the prohibitions against sales, in respect of the items included in Part I of the schedule, will come into force immediately—whereas those for which authorizing regulations will be made could be brought into effect on proclamation, when the necessary adjustments have taken place.

The Chairman: It is distinguishing between the portion of the bill coming into force on Royal Assent and the portion that comes into force by proclamation?

Mr. McCarthy: That is right.

The Chairman: After you have dealt with your regulations?

Mr. McCarthy: That is right.

The Chairman: Is the amendment carried?

Hon. Senators: Agreed.

The Chairman: The schedule on page 8 of the bill lists the products contained in Part I and in Part II. I think Mr. Coyne and his clients were here particularly in relation to these items. Is that right, Mr. Coyne?

Mr. Coyne: That is right.

The Chairman: And you have been over the changes proposed in this amendment?

Mr. Coyne: Yes, Mr. Chairman.

The Chairman: And you are satisfied with that?

Mr. Coyne: Yes, Mr. Chairman.

The Chairman: And I take it the Department in presenting these is satisfied with them?

Mr. McCarthy: That is right, sir.

The Chairman: Would you indicate what the changes are? I take it that all members of the committee have the amendments before them.

Dr. Chapman: Mr. Chairman and honourable senators, after discussion with the Canadian Paint Manufacturers' Association, we felt that this would be a more appropriate manner in which to list this item. You will note that we have changed from 0.1 per cent of the paint to 0.5 per cent of the total weight of the contained solids. It is now on a different basis, and we believe this is a more precise basis.

Furthermore, in discussion with the representatives of the Canadian Paint Manufacturers' Association, we felt that 0.5 on solids basis was satisfactory from the commercial point of view; that is, it would protect the sale of legitimate products, but this level would not represent any hazard to health. Therefore, we proposed these changes.

The Chairman: It does broaden the description as against what you had in Part I in the bill, where you have 0.1 expressed by weight of the lead oxide, that is, the content of the paint, the lead oxide in the paint?

Dr. Chapman: That is correct.

The Chairman: You have changed that to 0.5 of the total weight of the substance, which includes more than the lead oxide?

Dr. Chapman: No, no. I am afraid it is not quite that, sir. It is now 0.5 per cent calculated as lead, of the total weight of the solids;

where previously it was 0.1 per cent of the paint. That is, 0.1 per cent of the paint would represent probably about 2.5 per cent of the solids.

The Chairman: I guess that must be all right, but somewhere along the road you have lost me a bit.

Senator Leonard: It is less restrictive than it was.

The Chairman: That is what I thought it was. Is that correct?

Dr. Chapman: That is correct, yes. However, it is not five times, because now we are expressing it on the solids rather than on the paint itself. In other words, converting it from the paint to the solids in the paint would bring it up to approximately 0.25, and we have now raised it to 0.5 because we felt that, after discussion with the industry, they require 0.5. We believe that this is a realistic figure and does not represent any hazard.

Senator Molson: What change does this effect in the toxicity level?

Dr. Chapman: It is extremely difficult to say in this particular case. It is obvious that you have to determine how much a child could ingest and how much a child could gnaw off a particular piece of furniture. So it is extremely difficult to know what would be the toxic level, but it is considered that below 0.5 there would be no hazard.

Senator Leonard: And this again is agreeable to the association which made representations?

The Chairman: That is right. And this is the only change that is integrated in it?

Dr. Chapman: Under item 2, yes.

The Chairman: Under item 2. You also have a change under item 3. The amendment proposes to strike out items 2 and 3 and substitute other words. We have dealt with the new item 2?

Dr. Chapman: Yes.

The Chairman: What have you to say about the new item 3?

Dr. Chapman: In discussions again with the representatives of industry we discussed the method which would be used to determine the flash point, and we have posted that the method be specified. I think this is very

desirable because otherwise it would not represent the precise figure. The method that we decided upon in consultation with representatives of industry was a method included in the specification 1-GP-71 of the Canadian Government Specifications Board, and under these circumstances the flash point which we consider to be satisfactory would be zero degrees Fahrenheit.

The Chairman: Yes. A thought occurs to me, however, in respect of tying this determination to specifications of the Canadian Government Specifications Board. They change from time to time, do they not?

Dr. Chapman: Yes, it is possible that these do.

The Chairman: They can be changed, I take it, without coming to Parliament and getting legislation.

Dr. Chapman: That is correct. So that we are incorporating a formula here that is a variable. That is, the foundation may shift from time to time.

Senator Leonard: What is the purpose of the definition in the Canadian Government Specifications Board? Is it for a safety purpose that it is so defined in the Canadian Government Specifications Board methods?

Dr. Chapman: Well, sir, if you do not define the method, then the temperature that is indicated here would not be a precise figure, because it would vary depending upon the method employed.

Senator Leonard: What I am really directing my question toward is that, if the specifications by the Canadian Government Specifications Board, were for some other purpose than safety, then they might be changed, whereas we are concerned only with safety. Now, are the specifications of the board directly for the purpose of safety?

Dr. Chapman: No, sir. But you will note that this reads that it is not less than zero degrees Fahrenheit as determined by the method specified by this particular specification.

Senator Leonard: If they changed the method, as the Chairman suggested, might that affect the safety of the product?

Dr. Chapman: Well, if they changed this method significantly, it might alter this figure of zero degrees Fahrenheit.

The Chairman: Well, senator, if we say this is the method, we are talking about the specifications as they now are; if they are changed, does this provision change with the change? We are referring to a particular wording and item and we say "as determined by method 3.1 of the Specification 1-GP-71 of the Canadian Government Specifications Board". That is a particular item as it stands at this particular time. I was asking before whether it was a variable and whether, when the board specifications changed, this would change, but on the language it would not appear to.

Senator Molson: It is a definition, is it not?

The Chairman: Yes.

Senator Molson: I mean 3.1 is really a definition.

Dr. Chapman: Yes, this is correct.

The Chairman: Then they really incorporate that and no matter what happens to the Government Specifications Board afterwards this, in the form in which it appears in this amendment, is the way it continues.

Senator Molson: It would apply.

Mr. E. Russell Hopkins (Law Clerk and Parliamentary Counsel): It can change in any event. The Government can change the wording of the item at any time.

Senator Leonard: But the point is, does that change this bill?

The Chairman: Does that change the method we have described for the determination of the flash point, because the Government may change the specifications?

Senator Leonard: In other words, do we need any words indicating: "As existing now"?

The Chairman: Or "As existing from time to time". I would hate to give that kind of amendment, because that would really be getting back to the old "rover" position we had in hockey years ago.

Senator Molson: If this were the method 3.1 in the specifications as of this date, then, surely, if the specifications were changed, this method would still apply.

The Chairman: Perhaps we should find out what the point was that was raised by Mr. Coyne and his clients. What comments have you, Mr. Coyne?

Mr. Coyne: Mr. Chairman, I might call on Mr. Barry, the Executive Vice-President of the Association, who is with me and who is more competent to speak on this matter.

The Chairman: Would you come up here, Mr. Barry?

Mr. Eric Barry, Executive Vice-President, Canadian Paint Manufacturers' Association: Mr. Chairman, honourable senators, we felt it to be important that some method be specified so that there would be an exact determination of flashpoint measurement. This does raise problems. There is no reason, I suppose, why the date of the specification could not be attached, or as an alternative, perhaps, the method could be specified by regulation.

The Chairman: Well, if you said, "as of the date of the coming into force of this act," then no matter what changes were to take place in the specifications this would be frozen.

Mr. Barry: The specification 1-GP-71 is a specification defining the test methods to be used for testing other paint specifications issued by the Canadian Government Specifications Board, and the particular test referred to in method 3.1 is internationally accepted. It is similar to a test put out by the American Society for Testing and Materials. Their test is E-134, and is sometimes called the Pensky-Martens closed cut test. But there are different tests for different flash points. Depending on which one you use, you get variations in the results.

The Chairman: Well, if this particular method prescribed here by reference to the specifications were tied in to what is in existence at this time, would that bother you or would you have any objection to it?

Mr. Barry: No, sir, I would not. I think this would solve the problem.

Dr. Chapman: May I comment on that point, Mr. Chairman?

Mr. Barry: It would seem, sir, that it would be tying it down too tightly, because there might very well be an improvement in this method, and, if we specify the method as of a specific date in the legislation, then in order to change the method you would have to come back to Parliament.

The Chairman: That is right.

Dr. Chapman: Now, Mr. Barry also suggested that we could handle this by simply having a flash point less than zero degrees Fahrenheit, and specifying the method by regulation. You will note that in section 7(d) there is provision for the Governor in Council to make regulations generally for carrying out the purposes and provisions of this Part, and it could be handled in that manner. This would then give us the necessary flexibility to specify at this time by regulation the method which is indicated here. But it would provide the necessary flexibility to make changes, if there are improvements in the future.

The Chairman: As I understand what you have said, it is that if we incorporate this amendment as now worded there is still authority for changing that by regulation afterwards?

Mr. Coyne: May I add one comment? There is a purely practical difficulty here in the sense that, once this statute receives Royal Assent, this part of it becomes effective immediately. It is important that once it takes effect there should be a method which takes effect at the same time by which this definition can be interpreted.

The Chairman: That is why I put the question in the form I did. That is, that this change proposed in item 3 would remain in this form in the bill, and, notwithstanding that, there could be improvements done by regulation afterwards.

Mr. Coyne: Exactly, Mr. Chairman. The position which our association took was that this method could in fact be determined by regulation. This is perhaps preferable. There is no assurance that there will be a regulation on the precise date that the bill receives Royal Assent, so in the meantime there is in this way a specific test.

The Chairman: I see the point of view of Mr. Coyne and Mr. Barry. At least by writing this definition and this formula into the statute you have something basic to start with. If there are improvements in techniques for determining the flash point the Governor in Council can make those changes by regulation. Therefore it seems to me that we don't have the confusion that we thought might exist. Do you agree? Is the department satisfied or would the department be satisfied if we adopted the amendment in the form suggested here?

Dr. Chapman: Yes.

Senator Leonard: I wonder if any of the witnesses could give us, as laymen, exactly what the effect is of having a flash point of zero under this kind of determination method.

The Chairman: That is as against what we have in the bill?

Senator Leonard: Yes. I would like to know in layman's language what the effect of this is.

The Chairman: Can you explain what the difference is, Dr. Chapman?

Dr. Chapman: Well, we have an expert here.

Mr. Barry: I am not a chemist, but I understand the department was concerned with some particular products which have a flash point considerably below zero degrees Fahrenheit. Now, as I understand it, flash point means that when you subject a liquid to heat it gives off a vapour and the flash point is the temperature at which this will ignite if exposed to open flame. The products with which we are concerned are those products which gives off this vapour at 40 degrees Fahrenheit and which would ignite at that temperature. The limits are considerably above that and would have the object of precluding objects with a flash point below zero. Both ourselves and the department are satisfied for the time being. I think it was agreed between us that in future there would have to be further discussions with regard to some sort of warning with respect to a flash point higher than zero degrees Fahrenheit as was done in the United States.

The Chairman: Well, how does this compare with the bill where there is a flash point of less than 40 degrees Fahrenheit?

Mr. Barry: We felt this was too high and in the discussions the department agreed that zero degrees Fahrenheit which would meet our objections would meet the purposes of the department at the same time.

The Chairman: Well, you say it is too high, but "high" is relative. A flash point of less than 40 degrees Fahrenheit, would that not include almost every product?

Mr. Barry: No, but it would include a certain range of products such as lacquer used in furniture finishing, certain types of floor lacquers and certain types of paint and varnish removers with a flash point at less than 40

degrees Fahrenheit. These are quite safe when used under proper conditions, that is to say if you don't smoke while using them and if you have adequate ventilation. As long as the consumer knows this, it might well be unnecessarily harsh to ban such products, but what would give rise for concern would be items that will flash at a point well below zero, for these are definitely dangerous. We agree with the department that there should be provision for their being banned.

The Chairman: But why would they be dangerous? I would have thought the higher the temperature required for the flash point the more protection there would be, and now you say that at anything less than 40 degrees Fahrenheit you need to have warnings to people about the conditions under which they use them. Now, talking about lacquers, you are using this test point down to zero.

Mr. Barry: This would have the effect of banning the extremely dangerous products. There are others that will flash at normal temperatures of 60 or 70 degrees and that will not flash before that. But there are many products that people use from ammunition on up that are hazardous but which are safe if used under proper conditions, and we feel that these fall into this category. It is very much a question of a judgment that has to be made.

The Chairman: Thank you. Shall this amendment carry?

Amendment carried.

The Chairman: We have a further amendment here. On page 7, if you look at clause 13 you will see that in effect we are adding an additional subparagraph, subparagraph (d), and therefore we have to move the "or" along one paragraph. It says:

13. This Part does not apply to any substance or article that is—

And then after (a) (b) and (c) as shown there we have a new subparagraph

(d) a prescribed substance with the meaning of the Atomic Energy Control Act.

The reason for adding this is simply that it is covered by other legislation. Is that right, Mr. McCarthy?

Mr. McCarthy: We feel there is adequate protection under other legislation, namely the Atomic Energy Control Act.

The Chairman: Just as in the case of (a), (b) and (c) you feel there is adequate protection under other statutes?

Mr. McCarthy: Yes.

The Chairman: Shall this carry?

Hon. Senators: Carried.

The Chairman: All the discussion and consideration up to this time has been in relation to Part I of the bill dealing with hazardous substances. However there is a Part II to the bill and perhaps we should have something from the department on record to explain the purpose and scope of the amendments under other statutes as proposed by Part II of the bill. Which of you gentlemen would like to deal with this?

Mr. McCarthy: I will deal with that, Mr. Chairman. The purposes of Part II of the bill is to make the necessary amendments to the Criminal Code and the Food and Drugs Act which will provide that no longer will it be contrary to law to advertise or sell a substance—a contraceptive substance or device—but that this may be done in future under the authority of the regulations under the Food and Drugs Act. The Food and Drugs Act now has a Part which legislates in connection with devices, and the amendment proposed here is to remove from section 150 of the Criminal Code, which deals with dissemination of information articles such as contraceptive devices and to take those out of the Criminal Code and render it no longer part of the offence described in section 150 of the Criminal Code and to bring it under the Food and Drugs Act to be controlled by regulation.

The Chairman: That reference to the Criminal Code is in section 23 of the bill?

Mr. McCarthy: That is right, sir.

The Chairman: What you are doing is transferring the control of the prohibitions and the offence in the Code to the Food and Drugs Act?

Mr. McCarthy: That is right.

The Chairman: In section 22 you propose the repeal of section 9 of the Narcotic Control Act. That only deals with the certificate of an analyst. What have you accomplished there?

Mr. McCarthy: There are three sections in the bill which are designed to make uniform the three provisions, one in the Narcotic Control Act and two in the Food and Drugs Act, which deal with the use of the certificate of

an analyst in court as evidence. These sections have differed up until now. The new section that comes into play in connection with the control of drugs is intended to be used uniformly in the Narcotic Control Act and in the first part of the Food and Drugs Act. So, we now have a uniform provision which enables the certificate of an analyst to be offered and accepted in evidence, unless rebuttal evidence is put in.

The Chairman: Under these three provisions dealing with the certificate of an analyst, in each case the prosecution would present in court a certificate which had a signature on it and the description of the man's title, profession, occupation, or whatever it might be, and if it said "analyst," then, unless there is a challenge by the accused, no further proof is required of the qualifications of that analyst?

Mr. McCarthy: It may be done that way. It is in the discretion of the court. It is admissible, but it is not compulsory for the court to accept it.

The Chairman: Section 18 of the bill does say that:

A certificate of an analyst stating that he has analyzed or examined an article or a sample submitted to him by an inspector and stating the result of his examination is admissible in evidence in a prosecution...

Mr. McCarthy: Yes.

The Chairman: It continues:

...and in the absence of any evidence to the contrary is proof of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

It is simplifying the *prima facie* case the Crown may make out or may have to make out?

Mr. McCarthy: Yes.

The Chairman: It preserves for an accused person the right to demand the production of the analyst for cross-examination.

Mr. McCarthy: Yes. This has not been changed from what it was before, but it says it in a clearer way than it did previously.

The Chairman: Any other questions on this Part II? Are you ready then to report the bill?

Senator Leonard: Is there anything further to be said by way of explanation? You have covered section 18. What are the facts, for example, on section 19?

Mr. McCarthy: It is possible Dr. Chapman could explain this better, but there are substances which are not, as I understand it, technically drugs but which are the basic components or drugs over which control is also required, and this is the reason for the change in section 19 of the bill, where we have added:

"controlled drug" means any drug or other substance includes in Schedule G;"

because technically some things that might be included are not covered by the definition of "drug".

Dr. Chapman: That is right.

Senator Leonard: Is it a question of poppy seeds, opium, and things like that?

Dr. Chapman: Mr. Chairman, honourable senators, these are substances such as the barbiturates which are controlled drugs. In some instances this chemical is used for other purposes, for example, for a buffer in some photographic processes. Since it is a barbiturate and could be used as a drug it is necessary to provide a control over its importation and sale, but it is not recommended for use as a drug but for use in a photographic process. Therefore, this is the reason it is necessary to add "other substance," in order to cover barbiturates and to provide control over barbiturates that are not being sold as a drug.

The Chairman: It is not a case of whether the particular thing is or is not a drug. What you are really saying is that if you call it a controlled drug, then you are limiting the application of the schedule to that substance when it is used as a drug; whereas what you are now proposing to cover by adding the words:

"controlled drug" means any drug or other substance included in Schedule G;"

is the control of its possible use as a drug?

Dr. Chapman: That is correct, sir.

The Chairman: What would you call this substance? Is it, in essence, a drug?

Dr. Chapman: All these compounds are chemicals, and there are many instances where it depends entirely on the recommendations for use as to whether or not they are in fact a drug.

The Chairman: Is that substance called a drug because of its use, or is it in fact a drug?

Dr. Chapman: It is really because of its use.

Senator Macnaughton: It is a substance which could be used in industry but which could also be taken as a drug, if stolen from industry, is that it?

Dr. Chapman: That is correct.

The Chairman: What do I call it if I pick it up? Is it a drug then, or only a drug when I use it as a drug?

Senator Molson: Could not a substance contain a drug?

Dr. Chapman: Possibly I could explain it by referring to the definition of "drug" in the Food and Drugs Act, which says that "drug" includes any substance or mixture of substances manufactured, sold or represented for use in diagnosis, treatment, etcetera. The product is not a drug until it is manufactured, sold or represented for use as a drug.

The Chairman: Once you look at the definition of "drug" then you have the answer to the question I was trying to put.

Dr. Chapman: Yes.

The Chairman: Therefore, if you are going to have complete control against the possible use of this or any of these substances as a drug, it is necessary to have your definition broader than simply saying "controlled drug" means any drug or other substance ...?"

Dr. Chapman: That is correct.

Senator Molson: In the paper this morning there is an article which said that a new substance had appeared which was being used for psychedelic experiences. It had appeared in the hospitals in Montreal and was a compound sold in the normal way for the treatment of asthma. I think that as such it was burned for inhaling; but, apparently, when dissolved or put in water and taken it was giving very violent effects.

The Chairman: Do you mean "taking trips"?

Senator Molson: Yes.

Senator Leonard: Trips to the hospital!

Dr. Chapman: Trips to the hospital in this case where it developed.

Senator Molson: It said that in strong enough doses it could be lethal. Perhaps this change here might at some time cover materials of that sort, if they were specified?

The Chairman: Have you any comment on that, doctor?

Dr. Chapman: Yes, Mr. Chairman. This product to which reference has been made, which was referred to in the article in the news media this morning, has been on the market for many years. It is a product for the treatment of asthma. It contains atropin, belladonna and stramonium. When used properly, as recommended—and the recommendations for use include the burning of the substance and the inhaling of the fumes—it is not a dangerous drug. However, what has happened is that somebody has discovered that if you dissolve the product in water and then drink the mixture you get a violent effect. The problem here is that the dose which will produce this effect is very close to the toxic or lethal dose, and if you take a slight overdose you can very well end up in the hospital in very serious condition.

The Chairman: Or in the graveyard?

Dr. Chapman: Yes, this is correct, but it is not intended that this particular section will apply to this type of product.

Senator Molson: Then, let me ask you a further question. How do you deal with a product that is in fairly general use and that is easily obtained, but which can be used for wrong purposes, which is the case of this substance. How do you deal with that. Can you not add those to your two schedules in order to have some control over them by selling them by prescription or other means. Is there no way of preventing abuse of these things?

Dr. Chapman: Well, sir, there are literally hundreds of substances and drugs that are on the market now which if used properly do not represent any hazard to health, but if used improperly they could be a serious hazard to health. I know of no way of legislating against such misuse.

Senator MacKenzie: Is it not true that aspirin used to excess can be deleterious to health in certain circumstances? I am thinking of infants, for instance.

Dr. Chapman: Yes, sir, this is quite correct. As a matter of fact, acetylsalicylic acid and products containing acetylsalicylic acid represent approximately 25 per cent of the cases that are reported by poison control centres across Canada each year. In a number of these instances it is not always a case of a child getting hold of a bottle of acetylsalicylic acid tablets, but in some instances it is actually an overdose with the parent not realizing that this is a hazardous substance if taken in large amounts.

The Chairman: It is the old story. You can use an axe to chop down a tree, but it has other uses as well which some people might call abusive. I do not know how you legislate against that.

Senator Molson: Why bother about sniffing glue when you can take the asthma stuff instead? What are we worried about? Instead of glue sniffing and putting your head in a bag, or whatever it is you do, you can get a little asthma cure and swallow that. It seems to me there is a lot of effort going into some of these dangerous things, and others that come to light, and we seem to be saying: "Well, we will not be able to cope with those because there are hundreds of thousands of them." It seems to depend upon their use—or, perhaps one should say "abuse".

The Chairman: It struck me that the use of this particular product in the treatment of asthma would bring it within the definition of a drug. Is not that right?

Dr. Chapman: Yes, sir.

The Chairman: If then in those circumstances you amend the definition of a controlled drug so that it means any drug or other substance then when this asthma treatment is being used for psychedelic effects you would have jurisdiction over it.

Dr. Chapman: Yes, sir, this is correct.

Senator Molson: That is really what I asked originally. I was inquiring whether, if it became a serious problem, it could then be put on the schedule. If this or any other substance became commonly abused and dangerously abused there is the power to put them on some schedule that limits the ability of people to obtain them; is that correct?

Dr. Chapman: This is correct.

Senator Molson: That is my point.

The Chairman: We have been talking about amendments to the Food and Drugs Act, the Narcotic Control Act, and the Criminal Code, but the real substance of Part II is that the advertising and sale of contraceptive devices will no longer be dealt with under the Criminal Code and be an offence under the Criminal Code, but will be controlled under the Food and Drugs Act. That is the real substance of Part II.

Having considered the amendments, are you ready to approve the bill as amended?

Hon. Senators: Agreed.

The Chairman: Then, that concludes our business this morning.

The committee adjourned.



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 23

Complete Proceedings on Bill C-187,
intituled:
"An Act respecting Divorce".

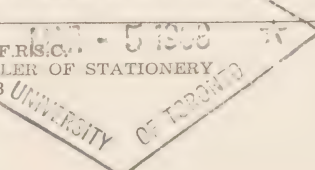
WEDNESDAY, JANUARY 31st, 1968
THURSDAY, FEBRUARY 1st, 1968

WITNESSES:

Department of Justice: The Honourable P. E. Trudeau, Minister and Attorney General; D. S. Maxwell, Deputy Minister and Deputy Attorney General; D. S. Thorson, Associate Deputy Minister.

REPORT OF THE COMMITTEE

ROGER DUMAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968



THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Paterson
Aseltine	Gouin	Pearson
Beaubien (<i>Bedford</i>)	Haig	Pouliot
Beaubien (<i>Provencher</i>)	Hayden	Power
Benidickson	Irvine	Rattenbury
Blois	Isnor	Roebuck
Bourget	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Burchill	Lang	Thorvaldson
Choquette	Leonard	Vaillancourt
Cook	Macdonald (<i>Cape Breton</i>)	Vien
Croll	MacKenzie	Walker
Dessureault	Macnaughton	White
Everett	McCutcheon	Willis—(45).
Farris	McDonald	
Fergusson	Molson	
Gélinas	O'Leary (<i>Carleton</i>)	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, January 25th, 1968:

"The Order of the Day being read,
With leave of the Senate,

The Honourable Senator Fournier (*Madawaska-Restigouche*) resumed the debate on the motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Fergusson, for second reading of the Bill C-187, intituled: "An Act respecting Divorce".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Roebuck moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

JOHN F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, January 31st, 1968.

(24)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Benidickson, Burchill, Connolly (*Ottawa West*), Cook, Desautreault, Everett, Fergusson, Flynn, Gélinas, Gershaw, Irvine, Lang, Leonard, Macdonald, MacKenzie, Macnaughton, McDonald, Molson, Pearson, Pouliot, Power, Roebuck, Thorvaldson, Vaillancourt and Willis.—(28).

Present, but not of the Committee: The Honourable Senators Fournier (*Madawaska-Restigouche*), Grosart, Hollett, Méthot, McElman, O'Leary (*Antigonish-Guysborough*), Sullivan and Thompson.

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of Committees.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill C-187, "An Act respecting Divorce", was read and considered, clause by clause.

The following witnesses were heard:

DEPARTMENT OF JUSTICE:

D. S. Maxwell, Deputy Minister and Deputy Attorney General.

D. S. Thorson, Associate Deputy Minister.

After discussion, it was *Agreed* that paragraph (e) of clause 2 stand for further consideration until the appearance of the Minister of Justice before the Committee to discuss the amendments proposed thereto.

MOTIONS:

(Full text of the following motions will be found by reference to the *Evidence* herein, beginning at page 169.)

The Honourable Senator Roebuck moved that clause 3 be amended by adding new paragraph (e) thereto.

The question being put, the Committee divided as follows:

YEAS—6 NAYS—7

Motion Lost.

The Honourable Senator Roebuck moved that clause 3 be amended by adding a new paragraph (e) thereto, such paragraph being different in substance from that proposed in the previous motion.

The question being put, the Committee divided as follows:

YEAS—4 NAYS—7

Motion *Lost*.

The Honourable Senator Roebuck moved that subclause (1) of clause 4 be amended.

The question being put, the motion was declared *Lost*.

The Honourable Senator Roebuck moved that subparagraph (ii) of paragraph (a) of subclause (1) of clause 4 be amended.

The question being put, the Committee divided as follows:

YEAS—5 NAYS—7

Motion *Lost*.

The Honourable Senator Lang moved that subclause (2) of clause 4 be deleted.

The question being put, the motion was declared *Lost*.

At 1.00 p.m. the Committee adjourned further consideration of the said Bill until after the adjournment of the Senate later this day.

AFTERNOON SITTING

WEDNESDAY, January 31st, 1968.

(25)

Pursuant to adjournment and notice the Committee resumed at 4.00 p.m. its consideration of Bill C-187, "An Act respecting Divorce".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Burchill, Connolly (*Ottawa West*), Cook, Dessureault, Everett, Fergusson, Haig, Irvine, Lang, Leonard, Macdonald, MacKenzie, McDonald, Molson, Pearson, Power, Roebuck, Smith (*Queens-Shelburne*) and Thorvaldson. (22).

Present but not of the Committee: The Honourable Senators Methot, McElman and O'Leary (*Antigonish-Guysborough*).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of Committees.

Mr. Maxwell and Mr. Thorson were again heard.

MOTION:

(Full text of the following motion will be found by reference to the *Evidence* herein, beginning at page 169.)

The Honourable Senator Roebuck moved that subclause (1) of clause 11 be amended by adding new paragraph (d) thereto.

The question being put, the Committee divided as follows:

YEAS—5 NAYS—7

Motion *Lost*.

AMENDMENT:

The Honourable Senator Roebuck moved that subclause (1) of clause 26 be amended in the said Bill, including the French version thereof.

The question being put, the motion was declared *Carried*.

(The above amendment fully appears by reference to the Report of the Committee immediately following these Minutes.)

At 5.20 p.m. further consideration of the said Bill was adjourned until Thursday, February 1st, 1968, at 9.30 a.m.

THURSDAY, February 1st, 1968.

(26)

Pursuant to adjournment and notice the Committee resumed at 9.30 a.m. its consideration of Bill C-187, "An Act respecting Divorce".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Provencher*), Benidickson, Burchill, Connolly (*Ottawa West*), Cook, Everett, Fergusson, Flynn, Gershaw, Haig, Irvine, Lang, Leonard, Macdonald, MacKenzie, McDonald, Roebuck Smith (*Queens-Shelburne*), Thorvaldson and Willis. (22)

Present, but not of the Committee: The Honourable Senators McElman and Thompson.

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of Committees.

The following witnesses were heard:

DEPARTMENT OF JUSTICE:

The Honourable P. E. Trudeau, Minister and Attorney General.

D. S. Maxwell, Deputy Minister and Deputy Attorney General.

D. S. Thorson, Associate Deputy Minister.

MOTIONS:

(Full text of the following motions will be found by reference to the *Evidence* herein, beginning at page 169).

The Honourable Senator Flynn moved that subparagraph (e) of clause 2 be amended.

The question being put, the motion was declared *Lost*, on division.

The Honourable Senator Roebuck moved that subparagraph (i) of paragraph (e) of clause 2 be amended.

The question being put, the Committee divided as follows:

YEAS—4 NAYS—10

Motion *Lost*.

On motion of the Honourable Senator Aseltine it was *Resolved* to report the said Bill as amended.

At 10.50 a.m. the Committee proceeded to the next order of business.

Attest:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, February 1st, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-187, intituled: "An Act respecting Divorce", has in obedience to the Order of reference of January 25th, 1968, examined the said Bill and now reports the same with the following amendment:

In the English version of the Bill, strike out subclause (1) of clause 26 and substitute therefor the following:

"(1) *The Dissolution and Annulment of Marriages Act, the Divorce Jurisdiction Act, the Divorce Act (Ontario) in so far as it relates to the dissolution of marriage, and the British Columbia Divorce Appeals Act are repealed*".

In the French version of the Bill, strike out subclause (1) of clause 26 and substitute therefor the following:

"(1) *La Loi sur la dissolution et l'annulation du mariage, la Loi sur la juridiction en matière de divorce, la Loi sur le divorce (Ontario) dans la mesure où elle a trait à la dissolution du mariage, et la Loi sur les appels de divorce en Colombie-Britannique sont abrogées.*"

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, January 31, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill C-187, and Act respecting Divorce, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*): In the Chair.

The Chairman: Honourable senators, we have before us this morning bill C-187. Since consideration of this bill may produce a very important discussion and possible changes, I think it would be the wish of the committee that the proceedings be reported. May I have the usual motion?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

Having settled that issue, the question of the manner of proceeding comes next. In view of all the discussion and all the consideration that has gone on in relation to this bill over a period of time, it occurs to me that, in those circumstances, we should get down to the business of the meeting and start in with clause 1 and go over the bill clause by clause. If there are correlatives of the clauses, we could deal with them together, but I think we should start out with clause 1 of the bill and continue in that way.

Senator Flynn: Has there been any communication or representation made in regard to the bill as it was passed in the other place?

The Chairman: No, as chairman I have had no indication. There have been a few letters in connection with the language of some clauses, but nothing other than that. Is that correct?

The Clerk: There has been no correspondence Mr. Chairman.

Senator Flynn: If there is any correspondence, will it be communicated to us when we come to the clauses concerned?

The Chairman: Yes. As a matter of fact, there was one which went to the Commons but arrived there after the bill had been considered in the Commons. The Clerk of the Commons sent it to the Clerk of the Senate, and the Clerk of the Senate sent it to me. It was from a legal firm in Toronto. When we come to that clause, I will call your attention to it. I do not think it adds anything further to the discussion.

Senator Roebuck: May I tell you, Mr. Chairman, that I have had a sheaf of letters?

The Chairman: Well, of course, you are the magnet—and I am not spelling it “magnate”.

Senator Roebuck: Most of these are unimportant, though one or two are important; but we can deal with them when we arrive at the point.

The Chairman: Honourable senators, we have here this morning Mr. D. S. Maxwell, the Deputy Minister of Justice and Deputy Attorney General, and we have Mr. D. S. Thorson who is the Associate Deputy Minister. They are here for the purpose of supplying any information or any explanations that would lie within their ability so to do. Obviously, of course, if we get into questions of policy we will have to defer them until the minister is available, if the committee wishes to discuss with the minister anything that may be of the nature of policy.

Senator Flynn: Do I take it the minister will be here only if the committee wishes him to be present?

The Chairman: No. He was to have been here this morning but apparently there is important government business which takes

him out of town and he is not available. If it becomes important, for any reason, that we wish him to appear, we can organize in some fashion so that he will come.

I am starting off with clause 2, the interpretation clause.

Senator Roebuck: What about the title? Will you come back to that?

The Chairman: I will come back to it.

Senator Roebuck: Now, Mr. Chairman, I have a number of amendments.

The Chairman: Have you any amendment in relation to paragraph (a), the definition of "child," in the interpretation clause?

Senator Roebuck: Mr. Chairman, I have quite a number of amendments.

The Chairman: Have you any amendments in relation to subsection (a), the definition of "child" in the interpretation section?

Senator Roebuck: I have a number of amendments. I will just wait a moment, however. I have had the amendments that I propose duplicated so that everybody can have them. They are however, put up in little sheaves, all of them together in a group, and then there are a great many groups—enough for us all. I suggest that we distribute these now and that they be taken up as we come to them. It would be better, I think if they were distributed from time to time, but they are not in that shape. The press may have a copy of the amendments on condition that they are not used until they are presented here.

The Chairman: No. This material at this moment is not being considered by the committee. We will come to it at we proceed in consideration of the bill. Therefore, that is the only time at which it becomes a matter for release to the press. Not in advance.

Senator Roebuck: Then, if honourable senators will just keep to one side the little batch of amendments which I will propose and take them up as we arrive at them, perhaps we will get along all right.

The Chairman: Now we are starting in section 2 of the bill, subparagraph (a) on the definition of "child". Is there any discussion on that? Are there any questions in connection with that? Shall that definition, subparagraph (a) carry?

Hon. Senators: Carried.

The Chairman: Then we have subparagraph (b), "children of the marriage". Is there any discussion?

Hon. Senators: Carried.

The Chairman: Subparagraph (c), on the definition of "collusion". Are there any questions?

Hon. Senators: Carried.

The Chairman: Subparagraph (d) on the top of page 2, "condonation". Are there any questions?

Hon. Senators: Carried.

The Chairman: Now we come to subparagraph (3), definition of a court.

Senator Roebuck: I have something to say in connection with that:

2. (i) for the Province of Ontario, Nova Scotia, New Brunswick or Alberta, the trial division or branch of the Supreme Court of the Province...

There is no such entity in the Province of Ontario as the "trial division of the Supreme Court of the Province", as stated in section 2, the interpretation section.

If you will look at my proposed amendment to that, gentlemen, you will see the following:

That Section 2(e) be amended by inserting after line 7, on page 2, which reads "court for any province means," the following words:

(i) for the Province of Ontario, The High Court of Justice for Ontario

And by striking out of line 2, of Section 2(e) the word "Ontario"

And by renumbering the then following paragraphs accordingly.

The Chairman: Wait a minute. You have lost me. We are dealing with subparagraph (e). I have your amendment before me.

Senator Roebuck: I am striking out "Ontario" there in (e) (i) and inserting above that this further phrase, "for the Province of Ontario, the High Court of Justice for Ontario".

If you will permit me, I will make some comments on that. What might be loosely called a trial division or branch of the Supreme Court of the province is designated in the Judicature Act of the Province of On-

tario, being Chapter 190 of the Revised Statutes of Ontario, section 3, as follows:

The Supreme Court shall continue to consist of two branches, The Court of Appeal for Ontario and The High Court of Justice for Ontario.

Now, that is R.S.O. 1950, Chapter 190, Section 3.

The functions of the High Court of Justice for Ontario are determined in the Judicature Act for Ontario under the heading "Jurisdiction and Law", R.S.O., 1950, 190, 11, (1):

The Court of Appeal shall exercise that part of the jurisdiction vested in the Supreme Court which, on the 31st of December, 1912, was vested in the Court of Appeal and in the Divisional Courts of the High Court, and such jurisdiction shall be exercised by the Court of Appeal, and in the name of the Supreme Court.

Subsection (2) of that section:

Except as provided by subsection 1, all the jurisdiction vested in the Supreme Court shall be exercised by the High Court in the name of the Supreme Court.

Now, that means that the traditional jurisdiction of the Supreme Court shall remain the same and the trial division, so-called, is termed the High Court of the Supreme Court.

The Honourable James C. McRuer, LL.D., former Chief Justice of the High Court of Justice for Ontario, referring to this section, that is Section 2(e), where it says:

"court" for the Province of Ontario is defined as 'the trial division or branch of the Supreme Court of the province'.

Now, I am reading his words:

These words have no precise legal meaning in Ontario. Section 3 of the Judicature Act provides that the Supreme Court shall consist of two branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario. It is true that the High Court of Justice is the court in which cases are tried but it is not the trial branch of the Supreme Court of Ontario. A great many other things are dealt with in the High Court of Justice for Ontario besides trials. In short, the trial division or branch of the Supreme Court of Ontario is not a known legal entity. When jurisdiction is being conferred on a court, it should be in language that is clear, unequivocal and does

not require interpretation by seeking out what the intention of Parliament was in the use of inapt language in legislation.

Now, I am unable to say whether the other designations further on for the other provinces are correctly stated, but it is perfectly obvious from what I have said of the Judicature Act and what the former Chief Justice says that it is quite wrong to refer to the particular court to which we are referring jurisdiction as the branch of the Supreme Court, and not use the designation set out in the statute.

And so I move accordingly.

The Chairman: Mr. Maxwell, what have you to say?

Mr. D. S. Maxwell, Deputy Minister and Deputy Attorney General, Department of Justice: I think perhaps I should point out first of all that for all of the provinces mentioned in that subparagraph (i), you have a situation where the Superior Court of the province is described as the "Supreme Court" and in each case that Supreme Court is divided into two parts, one part operating as a court of appeal and the other part operating in effect as a trial court.

It is true that we have not selected the specific name, but we have used general descriptive language which in my submission would describe, in the case of Ontario, the High Court of Justice, and indeed it will describe nothing else but the High Court of Justice. There is perhaps some advantage in using a general description because, of course, the province might change the name of its High Court of Justice at any time, but it is not likely, however, to change its function which is essentially a trial function.

My submission would be that there really is no possibility of any doubt as to what tribunal we are designating by this description, Senator Roebuck.

The Chairman: What you are saying, Mr. Maxwell, is that the description here is by function.

Mr. D. S. Thorson, Associate Deputy Minister, Department of Justice: Yes.

The Chairman: Rather than attempting to give the exact Christian and surname of the particular body carrying on that operation at this time.

Mr. Thorson: Yes.

Mr. Maxwell: Yes, and I may say, Senator, that if we were going to change the description as suggested by Senator Roebuck, we would probably have to examine and change all of the descriptions that are found now in subparagraph (i). I think you would have to select the very name that is used for each of the provinces concerned.

Senator Roebuck: Well, I submit that you ought to do that. When the legislature of the province says the name of the court should be so and so, I think you should use that name, and the Chief Justice says you should not leave it to the interpretation.

The Chairman: You mean the former Chief Justice of the trial division?

Senator Roebuck: Yes. Well, he is a pretty experienced Chief Justice.

The Chairman: I do not think it was necessary to say that, Senator. You know my relationship with Mr. Justice McRuer. We are great friends and I have tremendous respect for his judgment and ability. So I was not slighting him in saying that he was the former Chief Justice, or downgrading his ability.

Senator Roebuck: Neither am I. And I certainly did not take that impression from what you were saying. But I think when we are legislating the granting of certain rights and powers to certain courts we should give the court the name given to it in the statutes of the province and not leave it to interpretation as to what court we mean. I might give the impression that we just don't know the name of the court.

The Chairman: Senator Roebuck's motion is on the basis that the court is called the trial court in Ontario.

Senator Thorvaldson: Before going further with this point, perhaps I could ask a question of Mr. Maxwell. If we should change this clause in accordance with the amendment, would that not have the effect of conferring jurisdiction on individual judges of the court of appeal of the provinces which is not intended?

Mr. Maxwell: That would not be so. We would still be designating the court and not the judges of the court.

Senator Pouliot: Mr. Chairman, who is the good-looking gentleman to your right?

The Chairman: On my right Mr. Maxwell, Deputy Minister of Justice and Deputy Attorney General.

Senator Pouliot: I wonder if Senator Roebuck has something more to say because if not I would like to put a question regarding Ontario divorces at this stage.

The Chairman: You may ask a question, Senator. I think Senator Roebuck has completed his presentation for the moment.

Senator Pouliot: Now, Mr. Maxwell, you know that the legislation concerning divorce in Ontario has never been referred to the Supreme Court. I mean the legislation of 1930. As I say, it has never been submitted to the Supreme Court for a decision on the legality of the statute.

Mr. Maxwell: You mean as to whether the Divorce Act (Ontario) is constitutional?

Senator Pouliot: I mean that there was federal legislation enacted granting the Province of Ontario the power to legislate about divorce in 1930.

Mr. Maxwell: Yes.

Senator Pouliot: That is the federal statute. But I don't know if you are acquainted with the fact that that statute has never been referred to the Supreme Court for a very good reason, and that is at that time an election took place and Mr. Bennett did not want to submit it to the Supreme Court of Canada to decide the point of its legality. Did you know that?

Mr. Maxwell: I don't know whether I knew it or not, but perhaps the view was taken that it did not need to be submitted.

Senator Pouliot: You can trust me, and I know that that is so.

Now, Mr. Chairman, I very much wanted to attend this morning and to see the Minister of Justice here at this very important meeting. I have very great respect for Mr. Maxwell, but he has no authority to speak about the policies of the department. Therefore I have a suggestion to make to the committee. As you know, there has been in the *Montreal Gazette* an item about the redistribution of powers between Ottawa and the provinces, and the question of marriage and divorces is mentioned therein. Now, if marriage and divorce are to be transferred to the provinces next week I do not see why we should complicate our lives by discussing a bill like this.

In my view we would render a great service to the provinces by giving them jurisdiction over marriage and divorce and in the meantime we could pass some legislation in order to empower the judges or commissioners to act. That is my suggestion.

The Chairman: Now, I have started to say that the question before us is—

Senator Flynn: Mr. Chairman, I wanted to point out that the position taken by me in the house—

The Chairman: That comes under the next subsection.

Senator Flynn: It is in subsection (3). If the amendment which I indicated I would propose should carry then the amendment of Senator Roebuck would not be needed. The problem which he raised would disappear by mere fact of the acceptance of my amendment, and therefore I wonder if it would not be better to stand the amendment of Senator Roebuck while we discuss the viewpoint I submitted before the house the other day. On the other hand so far as the opinion that I would like to express is concerned, it seems to me that the presence of the minister would be most desirable and if there is a possibility that we can have him before the committee later I would even move that we stand subsection (e) until he is here since this involves questions of policy with regard to leaving to the provinces the choice of the court which would handle divorce petitions.

I would like to know from the minister why he would have any objections to leaving the situation as is save and except to give to the Divorce Division of the Exchequer Court for Quebec and Newfoundland jurisdiction until the legislatures of those provinces have decided otherwise. This is a question of policy on which I think we would like to have the opinion of the minister. I have an amendment along the lines I have indicated and if it is adopted by the committee then we do not need to define any of the provincial courts as are defined in the bill in paragraph (e). Therefore the amendment proposed by Senator Roebuck would not be needed. I don't know what is the view of the committee as to the suggestion which I made that we should stand this paragraph until we have the minister before us.

The Chairman: Well, if it is the wish of the committee to have the minister here at any time, we will endeavour to arrange that, but we must have some orderly method of pro-

ceeding. First of all, I don't know whether the committee is prepared to approve your amendment.

Senator Flynn: Well, there would be a small chance that it would if the minister did not object.

The Chairman: You are proposing an amendment at this time to Senator Roebuck's amendment. We can deal with it in that fashion, although I agree it would be a very unsatisfactory way to deal with it.

Senator Flynn: But it would not be a subamendment to Senator Roebuck's amendment. If I may read what I have here; my amendment would replace what is already in here by the following:

1. Strike out paragraphe (e) of clause 2 and substitute therefor the following:

"(e) 'court' for any province means the court which is given jurisdiction to entertain a petition for divorce by the law of that province and, where no such jurisdiction is given, the Divorce Division of the Exchequer Court, and for the Yukon Territory or the Northwest Territories, the Territorial Court thereof;"

2. Strike out clause 22 and renumber the following clauses accordingly:

At present in Ontario it is the Supreme Court and in Nova Scotia it is the special divorce court. In other places it has been suggested that the county court should have jurisdiction. Many provinces have indicated their desire for and intention to create family courts to which would be referred not only problems of divorce but also all related matrimonial matters. And, therefore, if as I have indicated, it is the responsibility of the province to look after the administration of justice in the province, it would be the problem of the legislature to decide which court is better equipped to deal with divorce and related matters.

The Chairman: The substance of your proposal is that the province be given the authority to designate what courts in the province shall hear divorce?

Senator Flynn: This is the present situation.

The Chairman: That looks like a delegation.

Senator Flynn: No. Well, we can argue on this, but presently, Mr. Chairman, you know very well that the courts which deal with

divorce are given their jurisdiction by the legislature; and, if you speak of delegation, there is delegation there. That is why I say it is a problem of policy, and I would like to have the minister say why he would insist on telling the provinces which court is going to deal with divorce in a given province. I do not see why the federal Government should dictate to the provinces in this field, and I would like to have the view of the minister on this very point.

The Chairman: You are right in the area of policy now.

Senator Flynn: Yes.

The Chairman: Is it the wish of the committee, before we stand the section to hear the minister on that point, to hear the views of the deputy minister on the legal aspects of the question?

Senator Flynn: I have no objection to that course.

Senator Macdonald: Perhaps he could tell us if there is any objection to the present Court for Divorce and Matrimonial Causes in Nova Scotia continuing to hear divorce cases.

The Chairman: I think this witness is experienced enough that he will only go so far as to discuss the legal aspects, and there is some element of policy on the question you put forward that will have to stand for the minister.

Senator Roebuck: May I suggest that we proceed, Mr. Chairman? Our words are being taken down; our motions will be of record. The minister and his associates can then study them. We could have another meeting and hear from the minister, but I think we should go right ahead. We invited the minister here today, but he could not come. Let us get our work done.

The Chairman: We are going ahead, senator, but the committee, I take it, would like to hear the legal point of view supporting the course which has been taken and not any discussion of policy, because that is for the minister. The suggestion has been made that we hear Mr. Maxwell on the legal aspect. Is that the wish of the committee?

Senator Fergusson: May I interject here, Mr. Chairman?

The Chairman: Yes, Senator Fergusson.

Senator Fergusson: I wanted an opportunity to support Senator Roebuck's motion, and what I have to say is very small, but in looking up some cases in an attempt to refute the argument of Senator Prowse in the Senate regarding the idea that a judge will provide for the deserted wife, regardless of the legislation on the books, I came across some cases, one of which certainly supported my view, that of *Minaker v. Minaker*. In looking this up I came across a report in the Ontario Weekly Notes of 1949, at page 71, and at the head of that it is set out that this is under the High Court of Justice. It does not refer to the Supreme Court of Ontario or the Appeal Court of Ontario, but it is set out as the High Court of Justice. I think this supports Senator Roebuck's suggestion; and I think too that all these courts should definitely be spelled out.

Senator Roebuck: In a proper manner.

Senator Fergusson: Yes, with the proper designations.

Mr. Maxwell: Honourable senators, there are two or three points that have been raised. Perhaps I should say something about Senator Flynn's comment. I think I have said about as much as I could say regarding Senator Roebuck's suggestions.

Coming to Senator Flynn's suggestions, the view which I hold is that there really is not constitutional power in the provinces to confer jurisdiction with regard to a federal head of subject matter on provincial courts. In a very recent case that came before the Supreme Court of Canada, the *Laflleur* case, a question arose as to whether or not the Legislature of Quebec could confer jurisdiction with regard to prohibition in criminal matters on their Superior Court, and it was the judgment of the full court, given by Mr. Justice Fauteux, that the province did not have this power. Therefore, I think we must be driven to the conclusion that the head in section 92, dealing with the administration of justice in the province does not enable a provincial legislature to confer jurisdiction with regard to a federal head on one of its own courts.

The only other way you could get there is by means of delegation, and under our constitution that too is not open. So, on either view of the matter, it would appear that the legislature does not have the constitutional power to do this.

Also I think I could make this general observation, which perhaps just touches on policy, that so far as I know off hand, this kind of thing is not done with regard to any

other head under section 91. It is the Parliament of Canada that decides what court is going to exercise criminal jurisdiction in the province. It is the Parliament of Canada that decides what court is going to administer bankruptcy legislation, and so on. So, I think this may indicate, as a matter of policy, quite apart from the legal consideration—and "policy" in the very general sense of the term—that it would not be a normal procedure.

Senator Roebuck: When jurisdiction was conferred upon the Supreme Court of Ontario to handle divorce cases, who did it, the province or the dominion?

Mr. Maxwell: It was Parliament.

Senator Flynn: By which act?

Mr. Maxwell: The Divorce Act (Ontario), in 1930.

Senator Leonard: Cannot you do it in the way you do now under section 22 of the bill?

Senator Flynn: And in the other provinces?

The Chairman: What section, Senator Leonard?

Senator Leonard: Section 22 of the bill.

Mr. Maxwell: I think that section 22 is not really a conferring of power on the legislature, but is really the invoking of a federal power when certain things occur. If this bill becomes an act, it could operate to confer jurisdiction on the Superior Court of the Province of Quebec or on the Newfoundland Supreme Court.

Senator Leonard: Is not the point that Senator Flynn is making that the province should declare which court is to be the court, and then the Governor in Council, on the recommendation of the Lieutenant Governor in Council, issues the proclamation?

Mr. Maxwell: I do not think this is what Senator Flynn is proposing as I understand his proposal, and I think perhaps that would not be a normal thing to do.

Senator Flynn: What Senator Leonard is suggesting is that if you need only to confirm the decision of a province, as you do in section 22, you would only have to have a provision of that kind to assure that the jurisdiction given by my amendment would be constitutional. That is my understanding of Senator Leonard's argument.

Senator Leonard: That is the point I am making.

Mr. Maxwell: Perhaps I did not meet your point head on. Perhaps I should refer you back to subparagraph (ii) in section 2(e).

The Chairman: That is on page 2.

Mr. Maxwell: The (B) part of that subparagraph, when dealing with the Province of Quebec—you see, it is the statute which confers jurisdiction. It is not the provincial legislature that confers jurisdiction.

Senator Leonard: That is quite true.

Mr. Maxwell: Well, it is a fundamental legal difference.

Senator Leonard: But it does not do it by delegation. It does it by saying, in the first instance, it will be the Exchequer Court, and, in the second instance by providing that the Governor General in Council will issue a proclamation that the court will be determined by the province.

The Chairman: No, section 22(1) says:

The Governor in Council may, on the recommendation of the Lieutenant Governor in Council of Quebec, issue a proclamation...

Mr. Maxwell: The province can make only one decision under the legislation, namely, that this court should or should not be the court. It does not give the province the opportunity of determining that jurisdiction should be in some other court.

Senator Connolly (Ottawa West): What is the difference between a delegation and a designation?

The Chairman: Yes.

Senator Thorvaldson: What is the difference between a delegation and a designation? Do not those words mean the same thing?

Senator Leonard: Here this is really designation; it is not delegation. We are designating either the High Court of Justice of Ontario, or we are designating some court that is in turn named by the Lieutenant Governor in Council.

The Chairman: Of course, when you start running around with these words you must realize that the basis of this is that the federal authority has the exclusive jurisdiction in

divorce. You start from that. The federal authority confers authority or jurisdiction.

Senator Leonard: On a court.

The Chairman: Yes, on a court. That is a direct confrontation. This picking out of a particular body or group and saying: "We confer authority on that body or group," is designation. Once that body gets that authority it exercises it, but it cannot delegate it further.

Senator Flynn: The system suggested by Senator Leonard would be designation because the Governor in Council would have discretion in accepting the choice of the province. The Governor in Council accepts the choice the province makes in respect of a divorce court. There are many good reasons why a province would rather, in a given case, give that jurisdiction to the superior court or the supreme court or, in another case, to a family court. If the Governor General in Council is satisfied to operate under the system provided for in section 22 he will approve or not approve the choice made by the province and, therefore, by this decision would be designating the court. There is no doubt about that.

The Chairman: I am sorry, but I cannot follow you, senator. I understand what you are saying, but I cannot follow...

Senator Flynn: Well, when you do not want to follow me, you do not, but when you do, you do.

The Chairman: Senator, that works in reverse too.

Senator Flynn: That may be true, but I have been following you more often than you have been following me.

Senator Connolly (Ottawa West): May I point out that the authority that is conferred in section 22, as I read it, is the authority to designate not any court selected by a province, but the Superior Court in the case of Quebec, and the Supreme Court in the case of Newfoundland. That is precisely what is done by section 2. It is not a matter of delegating, it seems to me, in section 22. Section 22 sets up the Exchequer Court to hear divorces in these two provinces. If, however, the provinces choose not to use the Exchequer Court the federal authority confers jurisdiction at their option upon their superior courts. Section 22 is an exercise of federal jurisdiction in respect of the Superior Court in the case of

Quebec, and the Supreme Court in the case of Newfoundland, if they choose to use it.

The Chairman: May I summarize what I think the position here is at the moment. We seem to have arrived at the stage where we have had opinions expressed to the effect that what is proposed by Senator Flynn's motion would not be a valid exercise of power. We have had opinions expressed to the contrary. Underlying it all is the question of policy. Even if Senator Flynn's point of view were in law supportable there is still the question of policy which represents the choice between one course or another. When we get to that stage it appears to me that what we should do is stand the section, and discuss it with the minister. We do not have to accept the...

Senator Thorvaldson: I am glad you have made that statement, Mr. Chairman, because you came close to suggesting that we were just a rubber stamp, and had no power to accept...

The Chairman: Senator, I am wondering whether you have been listening to me. I suggest that when you go back and read the text of what I said you will not find anything of that kind in it.

Senator Leonard: I think you are going to have to stand the section, but before you do may I ask if there is any understanding in Nova Scotia, New Brunswick or Alberta in respect of the point Senator Roebuck has made, that that designation or description is not correct? Would the present description "the trial division or branch of the Supreme Court of the Province" be applicable in Nova Scotia, New Brunswick and Alberta, notwithstanding what Senator Roebuck has said about its not being applicable in Ontario.

The Chairman: Have you anything to say on that, Senator Macdonald?

Senator Macdonald: It would not be applicable in Nova Scotia. In Nova Scotia we have a separate court which was established in 1841, and which has been in operation ever since. It is called the Court for Divorce and Matrimonial Causes. The reason why we in Nova Scotia would like to keep this court, apart from the fact that it has given general satisfaction, is the fact that to this court have been named six judges of the Supreme Court of Nova Scotia and six judges of the County Court of Nova Scotia. There are twelve judges on that court which can hear divorce

cases, and we want to keep that court. What I had in mind was to move a sub-amendment to Senator Roebuck's amendment, to insert after the words "High Court of Justice of Ontario" the words "for the Province of Nova Scotia the Court for Divorce and Matrimonial Causes", and then will follow some subsequent words. But, if the whole clause is going to stand then I will wait.

The Chairman: I think the question I intended to ask you—and I think this is also Senator Leonard's question—is whether "Supreme Court of Nova Scotia", meaning the court in which trials are conducted, is an exact description of that court. To say "the trial division or branch of the Supreme Court of Nova Scotia"...

Senator Macdonald: Yes, that is a correct description.

The Chairman: Now, is there any senator from New Brunswick who is in a position to tell us the same thing in respect of that province? Mr. Maxwell, is that description a proper description in accordance with the statutory designations in the other provinces?

Mr. Maxwell: Mr. Chairman, I am afraid I would have to check this. If I had my copy of the Judges Act here I could do it immediately.

The Chairman: Then, we will stand...

Senator Leonard: I have one more point to make, Mr. Chairman. I think there is a little awkwardness in the wording of Senator Roebuck's amendment, which probably should be taken into consideration when the matter comes up again for discussion. I think the wording is not quite as happy as it might be, and we might take another look at that.

The Chairman: Yes. Once the principle is settled we can then take up that matter.

Senator Leonard: Yes.

Senator Thorvaldson: Mr. Chairman, may I ask Mr. Maxwell one question?

The Chairman: Yes.

Senator Thorvaldson: I just want to mention that the fact is that ever since 1867 the federal power has always been exercised by a court in the province. There has been no change in respect of that?

Mr. Maxwell: I think that that is correct. I cannot think of any change offhand.

Senator Thorvaldson: I just want to say that in regard to the Province of Manitoba the Court of Queen's Bench has always had jurisdiction.

Senator Flynn: Mr. Chairman, I have a supplementary question. I do not know which federal statute designates the court having jurisdiction in divorce in New Brunswick, Saskatchewan, Manitoba, or the other provinces. Would you tell me where we find this designation in a federal act?

Mr. Maxwell: So far as New Brunswick is concerned, of course, the court derives its jurisdiction from pre-Confederation law, so I do not think we will find that designation at the present time in federal law.

Senator Flynn: And the same applies to Nova Scotia, I understand.

Mr. Maxwell: That is right.

Senator Macdonald: That trial division was set up only a couple of years ago. Prior to that time it was pre-Confederation, but you get this trial division now where you would not a few years ago.

Senator Flynn: Would Mr. Maxwell continue? The answer is not complete.

Mr. Maxwell: We are talking now about the western provinces?

Senator Flynn: Yes.

Mr. Maxwell: Again you have jurisdiction inferred from the fact that there is a body of substantive law in force in those provinces without any designation of the court. Therefore the Privy Council has held that it is the superior courts of those provinces which have jurisdiction in the absence of any designation.

Senator Flynn: I suggest that if you do not need a specific designation probably the legislatures could have any court.

Mr. Maxwell: I think not, for this reason. Where there is no designation of any kind I think it must necessarily be the superior court. In short, you would get back to the same result. In my submission, it does not follow that because there is no designation a province can come in and make a designation. I think not.

Senator Benidickson: In Northwestern Ontario we get a Superior Court judge only about twice a year, and it looks impressive

and expensive. What can we do to allow a district court judge to deal with it?

Senator Roebuck: I am coming to that in another amendment as soon as we are through with the present amendment.

Senator MacKenzie: I should just like to ask if our Law Clerk would check on the situation in respect of British Columbia in view of the legislation passed there recently conferring power only on county court judges, based I believe on pre-Confederation circumstances. I have forgotten the case, but I should like it checked.

Mr. Maxwell: I know about that case. Indeed, I was involved in it. I think perhaps that case may be mentioned at a later stage.

Senator Grosart: I should like to clarify this question of delegation and designation in the minds of laymen. Would Mr. Maxwell tell me what in his view the constitutional effect or otherwise would be if clause 22, subclause (1) read ...

The Chairman: Wait a moment, senator. We are on clause 2 at the moment.

Senator Grosart: But we are discussing clause 22.

The Chairman: We are not embarking on a consideration of clause 22.

Senator Grosart: I am not suggesting that we do. In view of the discussion we have had on the other clause I am asking what the effect would be if clause 22 read in the way I was about to suggest. I wish to ask this because it goes directly to the matter of delegation and designation, which has been the corpus of the discussion so far. I would ask your permission, Mr. Chairman, to direct that question to Mr. Maxwell for his opinion and clarification. If you think I should wait I would be glad to.

The Chairman: No, you are in order.

Senator Grosart: Could we have your opinion, Mr. Maxwell, on the constitutional effect or otherwise if clause 22 subclause (1), which has been referred to in the discussion, read as follows:

The Governor in the Council may, on the recommendation of the Lieutenant Governor in Council of any province, issue

a proclamation designating a court of that province for the purpose of this act ...

and so on?

Mr. Maxwell: What you contemplate, as I understand it, is that it is the province which should decide, and this will then tie the hands of the Governor in Council. I am a little unclear about the exact wording.

Senator Grosart: If I might explain, Mr. Maxwell ...

The Chairman: Read it again.

Senator Grosart: Mr. Maxwell asked me a question. That is not what I contemplated. What I contemplated was the Governor in Council being given the power to designate any court on the recommendation of the Lieutenant Governor in Council of any province.

Mr. Maxwell: But he could only act on the recommendation?

Senator Grosart: He may act on the recommendation, as he may under clause 22 now. He may only act on the recommendation in respect of Quebec and Newfoundland. I am asking what would be the constitutional effect or otherwise—and only the constitutional effect or otherwise—of the extension of this designation for certain courts in Quebec and Newfoundland to all provinces.

Mr. Maxwell: I think there is no doubt that the formula set out in subclause (1) of clause 22 could be applied in all provinces.

Senator Grosart: Constitutionally?

Mr. Maxwell: Oh yes. This formula could be applied.

Senator Grosart: That answers my question.

Senator Flynn: I want to be sure. If instead of mentioning a given court in clause 22 you say that the Governor in Council could approve, ratify or concur in the choice or recommendation made by a province, as has been suggested by Senator Grosart, the Governor in Council may on the recommendation of the Lieutenant Governor in Council of any province issue a proclamation declaring a given court for that province to be the court.

Senator Grosart: I did not say "a given court". A court.

Senator Flynn: A court to be the court for the purposes of the act.

The Chairman: We are speculating on the combination of paragraph (e) and (B) in dealing with the situation in the province of Quebec in relation to clause 22. You are presenting something which would ignore the definition of a court. The definition of a court in this bill is the Superior Court of the Province of Quebec if certain things happen.

Senator Flynn: Of course it presupposes an amendment to paragraph (e). The proposal of Senator Grosart would probably mean for any province where a proclamation has been issued under subclause (2) of clause 22 the court mentioned in such proclamation.

Senator Leonard: Otherwise the divorce division of the Exchequer Court.

The Chairman: Then paragraph (e) of clause 2 stands for consideration of the minister.

Senator Roebuck: No we are not letting it stand as a clause. We stand the amendment, if you please. I have more amendments on this clause which I wish to lay before the committee. We are not ready to stand the whole clause yet.

The Chairman: I mean that it is up to the committee. I understood that on the question of the definition of "court" we were getting into the area of policy and the committee wished to have the clause stood in order to hear the minister.

Senator Roebuck: I am quite satisfied with that, but I thought you said we were standing the clause.

The Chairman: No, we stand consideration of the clause. I do not see any difference between saying "standing consideration" and "standing the clause". It means that we have not dealt with it.

Senator Roebuck: The only point is that I wish to tender another amendment. That is all.

The Chairman: If you have another amendment dealing with the point that we are proposing to stand, I think it should be on the record now.

Senator Roebuck: I do not know what you are standing, even yet. Are you standing consideration of the amendments which are now proposed?

Senator Leonard: Standing 2(a) to 2(g)?

The Chairman: The proposal, as I understand it, is to stand further consideration of this paragraph (e) until the minister is present.

Senator Roebuck: Yes. Well, are you ready to accept another amendment?

The Chairman: If there is any other amendment that any member of the committee wishes to propose, that deals with paragraph (e), I think we should have it on the record now.

Senator Roebuck: Thank you, Mr. Chairman. I have here an amendment which I will put forward.

The Chairman: It is on page 11 of your memorandum, is it?

Senator Roebuck: Yes, it is number 11. In its report, the Joint Committee recommended that county courts of all provinces having jurisdiction to dissolve marriages be given jurisdiction in divorce. The committee also recommended that a petition lodged in the county court might be transferred to the Supreme Court by any of the parties who wished a higher court trial, as they are in any cases beyond the jurisdiction of the county court.

Clause 2 of bill C-187 defines the court having jurisdiction in divorce and other matters dealt with in the bill as the Supreme Court of the various provinces other than Quebec and Newfoundland—although in the provinces of Manitoba and Saskatchewan the Supreme Court is entitled the Court of Queen's Bench, and in the Yukon Territory and the Northwest Territories the Supreme Court there is entitled the Territorial Court.

The Joint Committee considered this matter carefully and after such consideration, and having heard the evidence of the Honourable J. C. McRuer, former Chief Justice of the High Court in Ontario, recommended that the county courts of all provinces having jurisdiction to dissolve marriages be given jurisdiction in divorce, equally and concurrently with the Supreme Court of the respective provinces. As the judges of the county court are local judges residing in their respective counties and having offices in the country town, so that access to them is readily available, and on the county court scale of fees, great advantage are foreseen to the parties, the witnesses, the members of the legal profes-

sion, and others, in the adoption of the committee's recommendation. Therefore, I am going to move that clause 2(e) be amended as follows...

The Chairman: Where do you add the amendment. Where are you proposing to add the amendment, to what part of the clause?

Senator Roebuck: Wait until I read it.

The Chairman: I have read it. Go ahead.

Senator Roebuck: I am amending it right there. The amendment proposed is:

That Section 2(e) be amended as follows: Wherever in the said subsection the words "Supreme Court" or "Superior Court" or the "Court of Queen's Bench" or "Territorial Court" appear, there be added immediately thereafter the words: "and County Court."

One senator suggested that perhaps my previous amendment was not too happy. Of course, I am not egotistical enough to think I have said the last word on the phraseology of amendments, but in this amendment I think I have made clear what I mean. I want to add "county courts" to the Supreme Court wherever it or any of the other courts appear.

The Chairman: That would really involve adding those words to each one of the subparagraphs of (e)?

Senator Roebuck: Yes. So I am really amending all of these subparagraphs.

The Chairman: The meaning of your proposal is clear and it is on the record. Are there any other amendments to paragraph (e) of clause 2, other than this?

Senator Flynn: I would—

Senator Roebuck: I do not know that I have another amendment to that section.

The Chairman: Senator Flynn, you read yours into the record.

Senator Flynn: That is all right.

Senator Leonard: As you are standing the whole clause, I wonder whether we should also have some discussion at this time on the last amendment proposed by Senator Roebuck, if anyone wishes to say anything.

The Chairman: Oh, yes.

Senator Roebuck: By all means. I would like to hear some discussion.

The Chairman: Is there any presentation to be made by any member of the committee in relation to extending the jurisdiction beyond what is provided in the bill, in other words, extending it to the county court in the various provinces?

Senator Flynn: I was going to ask Senator Roebuck if "county court" would be an adequate description of all the courts in the other provinces?

Senator Roebuck: Probably not.

Senator Aseltine: District court?

The Chairman: Senator Roebuck did not intend that this be the precise word to be taken.

Senator Roebuck: No, the meaning is there.

The Chairman: That is all right.

Senator Roebuck: Furthermore, I may add that some of these clauses of the bill might have to be amended in connection with this amendment. I do not know that, as I have not had time to study each one in reference to this. If we accept this, the department no doubt will assist us, or our own legal counsel will assist us, in the exact phraseology of the amendment.

The Chairman: That is right.

Senator Roebuck: I would like to hear opinions.

Senator Flynn: Is it your purpose that the provinces may have the choice of the Supreme Court, the Superior Court, or the county courts, or would you give them both the same jurisdiction?

Senator Roebuck: I think I could agree with the chairman in this, that it is our job to designate the court. We have done that in the past and we have never done it otherwise. On the other hand, we have always accepted the recommendations of others—subject to our own judgment. I have no doubt that if the Province of British Columbia or some other province should propose a certain court, such a recommendation would be very seriously considered by us. In the meantime, however, I am for the exercising of the jurisdiction which has been given to us to name the court ourselves. A study of this whole business of courts is in order and is really called for.

Senator Flynn: You did not answer my question. I was asking whether this gives both courts jurisdiction, or only one of them.

Senator Roebuck: I though I made that clear, that it is concurrent jurisdiction. I also mentioned the point from the report, that any individual party could move to transfer a trial from the county court to the Supreme Court, if he thought he needed a Supreme Court trial. That is not in that short resolution.

The Chairman: No, but I think it is clear that you mean to extend the jurisdictions so as to include what you might call the lower court.

Senator Roebuck: Yes.

The Chairman: In the sense of its jurisdiction in the province?

Senator Roebuck: Yes.

The Chairman: Are there any other submissions on this question?

Senator Benidickson: Mr. Chairman, may I say that I practiced law in the northwest part of Ontario and it was as far remote from our capital site as was Halifax. I repeat, we got justices of the Supreme Court only twice a year. I think it was rather a hardship on the people concerned to have to wait for them or to have to pay high fees to the higher court.

The Chairman: Honourable senators, would you excuse me for a few moments as I have an urgent call to deal with? Senator Leonard will take the Chair.

(Senator T. D'Arcy Leonard in the Chair.)

The Acting Chairman: Is there any further discussion on paragraph (e) or shall (e) stand?

Senator Flynn: Yes. For the record, if my amendment would be judged not constitutional, I alternatively move the following:

"court" for any province means

(a) where no proclamation has been issued under subsection (1) of section 22, the Divorce Division of the Exchequer Court, or

(b) where a proclamation has been issued under subsection (1) of section 22, the court named therein.

The Acting Chairman: Is there any discussion on Senator Flynn's point?

Senator Fergusson: Regarding what courts are going to be designated, I would like to ask a question, if I may.

The Acting Chairman: Yes.

Senator Fergusson: I understand that in New Brunswick most of the Bar are not in favour of county courts having jurisdiction. They are very much against it. But I have not had any information from the Attorney General's Department, and I wondered if the Department of Justice had received any representation on this from the Attorney General's Department of New Brunswick and, if so, what it was. I would like to know.

Mr. Maxwell: The information that I have, Senator Fergusson, is that the Province of New Brunswick is very satisfied with the bill in its present terms on this point at least.

Senator Fergusson: This is what I understand too. They do not want it changed.

Mr. Maxwell: This is true. As a matter of fact, the information that I have obtained over the last few months is that there is a considerable difference of view about the matter of county court jurisdiction.

Senator Thorvaldson: Mr. Chairman, along the same point, may I ask Mr. Maxwell if he has had any similar or other information from the Attorney General of Manitoba?

Mr. Maxwell: No, I think not, Senator Thorvaldson, I have not had any direct communication from that province, but I have no reason to think that they are dissatisfied in any way with the terms of the bill.

Senator Fergusson: I still do not know what Mr. Maxwell says in answer to my question concerning the Department of Justice having any direct communication from the Department of the Attorney General of New Brunswick, and, if so, what it was.

Mr. Maxwell: I have had discussions with the Deputy Attorney General and Mr. Hickman.

The Acting Chairman: Have you got your answer, Senator Fergusson?

Senator Fergusson: Well, no. I would like to know what the Attorney General's opinion is.

Mr. Maxwell: I am sorry. I thought I had said that they are satisfied with the bill as

presently written in so far as it applies to that point.

Senator Fergusson: I am sorry. I thought you meant the lawyers in New Brunswick are satisfied.

Mr. Maxwell: No, I spoke with both the Deputy Attorney General and Mr. Hickman, who is the former Deputy Attorney General, and who is at present adviser to the Attorney General.

The Acting Chairman: Is there any other comment?

Senator Macdonald: Have you had any communication from the Attorney General of Nova Scotia respecting that point?

Mr. Maxwell: The Attorney General of Nova Scotia has written to my minister and my minister has replied to that communication.

Senator Macdonald: Perhaps I could ask one other question which, although it is not actually on the matter, yet comes under the general orbit. In clause 26, where various acts are repealed, under subsection (2) it says:

Subject to subsection (3) of section 19, all other laws respecting divorce that were in force in Canada or any province immediately before the coming into force of this Act are repealed, but nothing in this Act shall be construed as repealing any such law to the extent that it constitutes authority for any other matrimonial cause.

Constitutionally, would that be sufficient to repeal the Act of 1841 in Nova Scotia setting up the Court for Divorce and Matrimonial Causes?

Mr. Maxwell: Well, it preserves the law to the extent that it may deal with any other matrimonial cause, Senator Macdonald. I suppose to the extent that there may be annulment jurisdiction remaining in your present Confederation court, of course it would be preserved for at least that purpose.

Senator Macdonald: Do you think there is a necessary implication there that everything else is repealed without specifically being named?

Mr. Maxwell: Oh, yes, I would think so. I would feel that you would not have to specifically designate the statute you repealed if the words clearly encompassed it, and I think they would.

The Acting Chairman: Does that answer your question, Senator Macdonald?

Senator Macdonald: I asked his opinion and he gave it.

Senator Flynn: The repeal would be with respect to divorce only.

Mr. Maxwell: Yes. You can repeal, of course, by implication. That is a possible way of repealing a law.

Senator Macdonald: If I remember correctly—I think it is Section 129 of the B.N.A. Act—pre-Confederation laws remain in force until repealed by the federal Parliament.

Mr. Maxwell: That is true.

Senator Macdonald: I was wondering if the necessary implication would be sufficient in such a case or if it would be necessary to name the law.

Mr. Maxwell: I do not think, Senator Macdonald, you would need to name the statute. I think, if you enacted a law that clearly ran opposite to the previous law, that law would be repealed by necessary implication, even although there are no express words of repeal in it. Therefore, if you repeal laws by describing them in a general way, I feel quite satisfied that that would work as a repeal, even although there is no express mention of the law.

The Acting Chairman: Is there any further discussion on subclause (e)?

Senator Grosart: Mr. Chairman, in view of the fact that, as I understand it, the minister will be here, it is a policy matter and I will not direct the question to Mr. Maxwell, but it is stated as personal opinion that, while it is a progressive step taken in this bill to extend reasonably the grounds for divorce, it would be equally progressive to reduce the cost of divorce and to improve the convenience of access to due process of law of the average Canadian.

The Acting Chairman: Senator Roebuck.

Senator Roebuck: I was going to say that from the discussion it seems clear that the situation is not the same in all the provinces and nobody can deal with that as effectively as the department. So, if we stand this matter, as we are going to, for Mr. Trudeau's attendance, a greater study than has been

made to date will no doubt follow. We will hear from him authoritatively, no doubt, when he comes.

The Acting Chairman: Does subclause (e) stand?

Hon. Senators: Stand.

The Acting Chairman: (f), marginal note: "court of appeal".

Hon. Senators: Carried.

Senator Flynn: I may just mention, sir, as we pass (f), that, if Parliament has any fear of giving jurisdiction to different courts in the province, the fact that there is an appeal to the Appeal Court of each province and then to the Supreme Court, if the Supreme Court wished to entertain such appeal, would help create uniform jurisprudence in this matter.

(Senator Salter A. Hayden in the Chair)

The Chairman: (f) is carried.

Hon. Senators: Carried.

The Chairman: (g), "petition"?

Senator Aseltine: In regard to (g), in the Province of Saskatchewan we have no petitions for divorce. We have just actions for divorce which are started in the same way as any other action is started. There is a writ of summons, a statement of claim attached, and that statement of claim asks for the relief.

Would the definition as it stands cover a case of that kind?

The Chairman: Mr. Maxwell?

Mr. Maxwell: Well, of course, Senator, this bill would contemplate that the document commencing a divorce proceeding would be a petition. I do not suppose that one could get around that in any way. It does not follow that all petitions must look alike. I do not suppose they need all say exactly the same thing, but I think it would be fair to say that we were hoping that there would be a good degree of uniformity in divorce proceedings across the country. I think it is fair to say that this bill was written with that in mind.

Senator Aseltine: We would have to remodel our Queen's Bench act and all our rules of court to comply with this.

Mr. Maxwell: With respect, I think you would have to enact new rules. I mean the judges of the court would enact new rules. I may say in that regard that it is our inten-

tion, once this bill passes both houses, to convene a conference of the judges with a view to trying to work out appropriate, and we hope more or less uniform, rules that will apply throughout the country in all of the superior courts.

Senator Benidickson: Mr. Chairman, the witness has just referred to uniform rules in superior courts across Canada. Now some of these items have been deferred, but I wonder if we could have in the meantime a consideration of ways and means of making it easier for people who are, for example, in Manitoba and who are a thousand miles from a superior court, and in northwestern Ontario, to my knowledge, there are people a thousand miles from the headquarters of the superior court—would it not be possible to work out uniform rules that make it possible for them to benefit by this new act?

Mr. Maxwell: I have no doubt, Senator, that that kind of matter will be considered when we get down to the hard work of trying to frame the new rules of court.

The Chairman: Are you ready for the question? Shall subparagraph (g) carry?

Hon. Senators: Carried.

The Chairman: Then, honourable senators, we come to clause 3 of the bill—grounds for divorce.

Senator Roebuck: I have some amendments to propose here. It is pointed out by the committee that wilful non-support on the part of the husband is a serious matrimonial offence, but no mention of it is made in the bill unless it was intended to be included in section 4 (1) (e) where the spouses had been living separate and apart for any reason for a period of not less than three years. This, however, is placed on the basis of a permanent breakdown of the marriage. It would, however, be much better to include it as an offence as the committee has described and as an offence not different in quality from desertion or cruelty. I will therefore move that section 3 be amended by adding at the end thereof following clause (d) the following words:

Wilful non-support by a husband of his wife or child or children without reasonable excuse for a period of one year.

May I add to that that the family courts are taxed to the limit with cases of men who have deserted their wives and refused to support them when they are quite able to do so.

I call special attention to the words "wilful non-support" as a serious offence and it should not be in clause 4 at all. It should be in the grounds for divorce in clause 3 as being a matrimonial offence. Clause 4 is different in that it gives relief where there is no actual provable offence but where nevertheless the marriage has broken down and is a dead letter. Therefore this should be in clause 3 and I so move.

The Chairman: Senator Roebuck, I would like to get your point of view concerning clause 4 which provides additional grounds which are all based on the breakdown of the marriage. Would you not agree that wilful non-support certainly for a year would be a ground which should come under clause 4 as being a breakdown of the marriage?

Senator Roebuck: I don't think so. I don't think it would be a breakdown of a marriage at all. The poor woman may start being faithful and may remain faithful to her husband although he is very unfaithful to her. I don't think it is proper to place it under clause 4. It ought to be included in clause 3 as an offence irrespective of whether the marriage has been disrupted previously. This particularly applies to the child or to the children of the marriage. It would be a godsend to the family courts and those who are trying to enforce the order of the family courts to make husbands pay, when they can. As you will understand, this only applies to husbands when they can pay and do not pay.

Senator Aseltine: In my opinion it should not be a ground for divorce. It is going too far.

Senator Roebuck: If we have before us a situation which cries out for relief, why don't we grant that relief?

Senator Grosart: Mr. Chairman, may I point out that in my reading of the bill clause 4 does not provide for automatic divorce or the right of divorce where there is merely permanent breakdown of a marriage or living apart. It says permanent breakdown, living apart plus these various matrimonial offences. So I would suggest that to say that wilful non-support is covered by subclause (d) would hardly seem to be correct.

The Chairman: Nobody said it was covered. I asked Senator Roebuck whether in his view it was covered and he expressed his view that it wasn't. He said it did not belong in clause 4.

Senator Roebuck: It isn't sufficiently covered.

The Chairman: It seems to me that if they are living separate and apart for a period of three years, then that is an additional ground for divorce under clause 4.

Senator Roebuck: Unless she starves to death in the meantime.

The Chairman: We have to keep within certain limits here, I think, and there is no assurance if there is wilful non-support for a year that any judge who grants a divorce or makes an order for alimony, etc., will be any more successful than they have been in the courts or other places where people now go for such relief.

Senator Roebuck: No, but she may find herself a very much better husband.

Senator Leonard: I don't think that is a sufficient ground for divorce in this particular case. It does not come into the same category as the other offences such as cruelty and bigamy. I would hesitate to accept that.

Mr. Maxwell: I should make it clear that the Government considered that recommendation and rejected it for policy reasons primarily. But I would add that it did seem to a number of people that that kind of ground might well result in making divorce far too easy. But, I suppose, this is a matter which one could argue both ways. I don't think I can help the committee too much more on this point.

The Chairman: Are you ready for the question on this amendment? Those supporting the amendment? Those contrary?

The Clerk of the Committee: Seven to six against.

The Chairman: The amendment is lost.

Senator Macdonald: While looking at clause 3 why not look at subclause (d) where it says: has treated the petitioner with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

The use of that word "intolerable" seems to be a vague usage in that context. It would be difficult to prove, I would think.

The Chairman: Maybe Mr. Maxwell can tell us whether there is any jurisprudence on it.

Mr. Maxwell: I am not certain there is any express jurisprudence on the word "intolerable." We thought we were laying down a test that would be acceptable. After all, when I put the converse to you, let us assume the activity is not intolerable. Then, perhaps, there should not be any right to divorce on that ground. Surely, it is only when the action or activity complained of creates an intolerable situation that there should be, at least arguably, a ground for divorce. I do not think I could give you a section of the statute which deals with this language as such, but we thought it a reasonably proper test and one that the courts could apply.

Senator Flynn: I am quite convinced it is subjective because what is intolerable to one may not be intolerable to another. I think the jurisprudence in matters of separation as to bed and board, as far as injurious offences are concerned, these have been judged in a subjective way, depending on the circumstances. "Mental cruelty" is something that is subjective also.

The Chairman: Oh yes.

Senator Macdonald: I notice it says, "with physical or mental cruelty ..." Would a combination of the two be accepted?

Mr. Maxwell: Yes, that cannot be read as being purely disjunctive.

The Chairman: Shall section 3 carry?

Senator Roebuck: I have another amendment, Mr. Chairman.

The only place where desertion is mentioned is in section 4, so I must consider these two together to some extent. Section 4(e)(ii) says:

by reason of the petitioner's desertion of the respondent, for a period of not less than five years,

The committee recommended that desertion be a ground for divorce as an offence, and it surely is. I took very strong objection—as some of my colleagues will remember—to making an offence by the plaintiff a ground for divorce from which he should benefit. This is not good principle and is not good in many other ways, so I am going to move:

That Section 3 be amended by adding thereto the following words:

This is No. 3 in my sheaf of amendments.

(f) has deserted the petitioner for a period of three years, in which the par-

ties have not cohabited and there appears no reasonable expectation of a resumption of cohabitation within a reasonable period of time.

That gets away from any idea of the wrongdoer taking advantage of his own wrong. This is that the deserted person may make that application to the court against the deserter. This is not covered by the bill now at all—unless you go into the pure separation ground, to which we will come later.

Senator Aseltine: Is it not covered by section 4, in a way?

Senator Roebuck: In a way it is, because there it says "for any reason", but that is too broad entirely for a bill of this kind. I do not know what the rulings of the courts would be on it, I am sure; but, besides that, it is not properly in section 4. It is an offence which should be in section 3, which covers offences.

The Chairman: Why do you say it is an offence?

Senator Roebuck: To desert your wife?—of course it is; it is a matrimonial offence, it is not a criminal offence.

The Chairman: I am talking about the whole amendment you are proposing. Desertion is covered in section 4.

Senator Roebuck: Desertion is covered in section 4 in an odd kind of way which gives the deserter the right to sue the deserted after five years.

The Chairman: Yes, and it gives the person deserted the right to sue in three years.

Senator Roebuck: It may or may not—"for any reason"—which is very, very wide indeed.

The Chairman: It is not "may or may not." In section 4(1)(e) it states:

the spouses have been living separate and apart

(i) for any reason ...

Senator Roebuck: "...for any reason"—that is about as broad as the Atlantic Ocean.

The Chairman: That is a very broad right for the wife, if she is deserted.

Senator Roebuck: I suppose we could abolish the whole of the act—Senator Grosart suggested that when we were debating the bill in the house—and say that for any reason

anybody can apply for a divorce, after so-and-so; and then you do not need any of the rest of the act at all.

Senator Leonard: Could I ask Senator Roebuck if he intends that this amendment to section 3 should take the place of the three-year desertion mentioned in section 4(1)(c)?

Senator Roebuck: No, that is a pure separation, and I will come to that shortly. But I would not leave it stand that a person may apply for a divorce after a separation of three years for any reason, by any means. I explained why in the house, pretty fully I thought. I would amend that to say, if they have been living separate and apart for three years and not cohabiting, and there is no likelihood of their resumption of cohabitation. That is a proper ground for divorce, on the ground of separation. That is not what it says now.

Senator Leonard: Could I again ask Senator Roebuck, is it meant to take the place of the five-year period in section 4(1)(e)(ii).

Senator Roebuck: I would strike that out.

Senator Leonard: Your amendment, in effect, of section 3 reduces the present five-year period to a three-year period, is that so?

Senator Roebuck: Yes, for this good reason, that when you come to determining the real culpability between the parties when they break up, one may be a technical deserter and the other technically deserted, but who knows what grounds he had for getting out? There are many men who are technically deserters who have allowed an application against them when the wife applies under the judicial separation clauses.

The Chairman: For support and maintenance?

Senator Roebuck: For support and maintenance, and so on. The man is prepared to allow the woman to go ahead with a motion. She alleged she was deserted, and although he does not offend he becomes the technical deserter, whereas, as a matter of fact, he may be entirely justified. So, I would not go into that unless it is raised in defence, and that is when we come to section 3. But that has very little to do with my suggestion that when the husband deserts a wife we ought to submit that to the court, because that is an offence against the marital arrangement.

Senator Aseltine: What is the policy of the department on this one?

Senator Roebuck: The department supports the bill.

Mr. Maxwell: Well, I think...

Senator Aseltine: I understand that the English act treats it as a ground.

Mr. Maxwell: Yes, it could of course be so treated as a ground.

Senator Aseltine: And in the bills I introduced in the Senate it was treated as a ground.

Mr. Maxwell: You see, we are in this position. I think that, if you are going to make desertion a marital offence, then in all logic you have to make it an offence after the same fashion as you have other marital offences listed here, for example, adultery. There should not be any question about the parties going back together again, and that sort of thing. It is an offence giving an immediate and unqualified right, I would have thought, to a divorce.

Now, the Joint Committee's recommendation about desertion was couched in such terms, as I remember it now, that it contained some qualifications, and the qualifications that were inserted rather led to the conclusion that it was more aptly described as a breakdown ground, and when...

Senator Aseltine: That is the point I want to get into.

Mr. Maxwell: Yes—and when you get into a consideration of whether or not there are grounds for a divorce it is a simple enough concept for the most part to talk about living separate and apart, because that is a relatively simple question of fact, rather than to start talking about who deserted who, because that raises difficulties and you could have a great dispute about whether or not there is desertion. But, whether or not people are living separate and apart is a relatively simple and easy thing to administer.

Senator Grosart: But, surely, Mr. Maxwell, that is something that is extremely important to determine—whether there was desertion. It is all right to say it is simple to determine whether the parties are living apart, but surely this is something that the legislation should be concerned with—the question of who is culpable in a particular case.

Mr. Maxwell: I think, Senator Grosart, it might be a factor, but certainly, in the way in which it is dealt with in this bill, it would only become important where the deserter decides to bring an action or a petition for divorce. It would then be a factor. This, of course, is penal insofar as the deserter is concerned. He can only bring his action after five years of desertion, whereas the deserted party, in our submission, can bring it after three years.

Senator Grosart: Mr. Chairman, I do not know whether we are now discussing clause 4—whether we are taking the two together...

The Chairman: We have got to. If there is something in relation to desertion in clause 4 then I point out that there is an amendment to put something in relation to desertion into clause 3. Are you going to leave in clause 3, and have it...

Senator Grosart: No, no; I am only asking if I am in order in discussing clause 4 in relation to Mr. Maxwell's remarks.

The Chairman: I interpreted your attitude as being one of opposition to dealing with the two clauses at the same time.

Senator Grosart: Not at all. I have never objected to the way you run the committee, Mr. Chairman. In fact, I have often commended you on it. I am fully agreed.

I would have some doubts, as others have, as to the advisability of placing this desertion clause in clause 3, because, as Mr. Maxwell has pointed out, under clause 3 the matrimonial offences there give immediate cause and immediate right of petition. Now, this does not apply under clause 4. Under clause 4 we have time limitations in respect of every one of the additional causes which must be added to permanent breakdown and living apart. I would support the suggestion that I think is coming from Senator Roebuck, that clause 4(i)(e) should be completely revised, otherwise we will be in the anomalous position of having one offence—and it may not under this—being made a legal offence.

My understanding is that the courts have determined over the years that desertion, of which willful non-support is an element, is to be regarded as a matrimonial offence. I do not believe it is the intention of this act to make it merely not a matrimonial offence, but the fact of desertion, in itself, a ground for divorce. That is the objection I made in the Senate, and I make it again here.

The Chairman: Are you ready for the question?

Senator Leonard: I should like to make the point, Mr. Chairman, that I think this amendment suggested by Senator Roebuck comes more properly under clause 4. Therefore, I am going to vote against it in respect of clause 3 in the expectation that he will move an amendment to clause 4 dealing with the period of desertion.

The Chairman: And if he does not, why, you may propose one.

Are you ready for the question?

Senator Roebuck: How would it be if we leave that alone for the moment while we go to clause 4?

The Chairman: There is an amendment proposed to clause 3 and, of course. . .

Senator Leonard: Mr. Chairman, it would be interesting to know why clause 4 is separated from clause 3, and if there is any additional proof required under clause 4 which is not required by clause 3.

The Chairman: Do you mean that we should ask Mr. Maxwell to give us the philosophy accounting for the existence of both clauses 3 and 4?

Senator Leonard: I would like to hear it.

The Chairman: Well, Mr. Maxwell?

Mr. Maxwell: Specifically, I think reference might be made in this regard to clause 9 of the bill, and to paragraphs (d) (e) and (f) of subclause (1) in particular, because these are the paragraphs that impose special duties on the court where the proceeding is under clause 4 rather than under clause 3. I do not suppose I need to read them because they are fairly clear...

The Chairman: No. The question is whether there is a possibility of reconciliation?

Mr. Maxwell: That is right.

Senator Leonard: They are two different concepts?

Mr. Maxwell: Yes, that is right, senator, and I might say this, that the recommendation of the Joint Committee in regard to desertion provided that it should be right—and I quote—"where there is no reasonable prospect of resumption of cohabitation within a reasonable period of time." That is the kind

of rider, if I can put it in that way, that would be more apt if it applied to the breakdown concept, and that, of course, is where we have it under paragraph (d).

The Chairman: Is that satisfactory, senator?

Senator Leonard: Thank you, Mr. Chairman.

The Chairman: Are you ready for the question? Those in favour of the amendment, please indicate. Those to the contrary? The amendment is lost.

Senator Roebuck: What was the count?

The Chairman: Six to one.

Senator Fergusson: No, I voted for that.

The Chairman: You did not have your hand up. I will ask again. Will those supporting the amendment please indicate? There are four hands raised. Those to the contrary? There are ten hands raised. The amendment is lost, ten to four.

Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Now, we come to clause 4. These are the additional grounds.

Senator Roebuck: I have something in the form of a preliminary statement to make about this.

The committee's report enumerated a number of conditions destructive of marriage which do not involve a marital offence on the part of either spouse, but which terminate cohabitation effectively. Among those are gross and habitual drunkenness, drug addiction, persistent criminality resulting in long terms in a penitentiary, and illness, mental or physical.

Clause 4 of the bill purports to carry out the various recommendations under this heading. The clause mentions permanent breakdown of marriage by reason of one or more of the circumstances enumerated. If the word "permanent" is understood by the courts as it is defined in Webster's dictionary, as a "lasting to the end," the petitioner under all the circumstances mentioned would be left with an impossibility—at least in some cases. It would not be possible to say in most cases that the separation would be forever, or until one of the parties died. Witnesses can only say what they know now. The committee met this difficulty by providing that the parties

had not cohabited for the previous three years and there appears no reasonable expectation of a resumption of cohabitation within a reasonable period of time. That is something specific which the mind can grasp. "Permanent" is something which cannot be grasped.

Accordingly, I move that section 4 be amended by striking out the word "permanent" in line 5 thereof and by adding after the word "petition" in line 8 thereof the following words:

The parties having not cohabited within the three years preceding the filing of the petition and there appears no reasonable expectation of a resumption of cohabitation within a reasonable period of time.

That is largely a matter of phraseology. I do not like this word "permanent" because it is unnecessary; it does not really specify what is meant. In the report of the committee there were two thoughts, the parties having separated for a period with no cohabitation and no likelihood of its being resumed. That is specific and something which can properly be administered by a court.

The Chairman: The section goes on to give some means of interpreting "permanent". It says:

permanent...by reason of one or more of the following circumstances.

Senator Roebuck: Yes, you have a single circumstance. Do not forget that subsection (2) of section 4 nullifies the whole business. Subsection (2) says:

On any petition presented under this section, where the existence of any of the circumstances described in subsection (1) has been established, a permanent breakdown of the marriage by reason of those circumstances shall be deemed to have been established.

That is an irrebuttable presumption.

The Chairman: What they are saying is that "permanent" does not mean permanent except within the scope of this section. If you establish one of these things, conditions or happenings, then for the purposes of this section that is permanent.

Senator Roebuck: Exactly, although it may not be permanent and although a witness is not able to say that conditions now existing will be permanent for all time.

Senator Aseltine: Do you not think you are splitting hairs a bit here?

Senator Roebuck: It is worth splitting hairs on a bill of this importance.

The Chairman: It is nice to have some hairs to split, senator!

Senator Roebuck: I do not like the word "permanent". It is not used in the committee's report. The words I propose to substitute for it are understandable and can be met by a witness. The word "permanent" cannot be met by a witness.

The Chairman: You are adding another condition.

Senator Roebuck: No, I am not. I am only rephrasing it. I am perhaps adding a little more to it. I am providing that the parties have not cohabited and also that there is no possibility of their resuming cohabitation.

The Chairman: What I am saying is that the husband, for instance, may have been in prison for a period of not less than three years during a five-year period immediately preceding the presentation of the petition, but if your amendment were accepted that would not be enough evidence, you would have to establish the fact that they had not cohabited for three years and there was no likelihood that they would resume cohabitation.

Senator Roebuck: That is all involved in permanent breakdown.

Mr. Thorson: May I ask a question? Do you intend the language of your amendment to apply to all the paragraphs set out in section 4?

Senator Roebuck: They are not necessary in some of the paragraphs, that is sure.

Mr. Thorson: Well, they alter the grounds altogether. For example, under the section dealing with gross addiction to alcohol, separation is not an element.

Senator Roebuck: I do not think you understand what is revolving in my mind. Where we need my wording is in paragraph (e), and I am coming to that. That is where that wording should be.

The Chairman: If that is so perhaps your amendment should not be inserted where you have indicated but should be inserted in paragraph (e).

Senator Roebuck: I think it would be a good thing if this whole subsection were reconsidered. You have addiction, and there a breakdown such as I have described is required; in alcoholism it is not required; in disappearance it is not required; in non-consummation it is not required. In (e) under "for any reason" it is required, and distinctly required.

Mr. Thorson: It is there now in the bill in section 9(1)(d). That is already a condition applicable to the various grounds set out.

Senator Roebuck: That says:

where a decree is sought under section 4, to refuse the decree if there is a reasonable expectation that cohabitation will occur or be resumed within a reasonably foreseeable period.

That is only half of it. It does not express the thought that they have not cohabited for three years. They are separated for three years "for any reason".

Mr. Thorson: I repeat that the three-year test of non-cohabitation is not applicable universally to the various enumerated circumstances of section 4. It is not intended to be.

Senator Leonard: It is more appropriate under paragraph (e), is it not?

Mr. Thorson: Yes.

The Chairman: Then you have section 9(1)(d) to which Mr. Thorson has referred, which seems to deal with that.

Senator Leonard: Yes, it does.

Mr. Thorson: That is only one year in section 4(1)(d), for example.

Senator Grosart: Which is more a ground for annulment than divorce.

The Chairman: That is right.

Senator Thorvaldson: Before voting on the section I should like to refer to the amendment and the word "permanent". I do not think we are splitting hairs on this at all. I believe it is very important to retain the word "permanent", because if I were a judge and this section came before me with merely the phrase "marriage breakdown" it would be meaningless to me. There are all kinds of marriage breakdown which are healable and I would not know what to do. By striking out the word "permanent" we would be in a position we do not intend to be in at all. I think it

is very important to retain the word "permanent" in that section, with all due respect to my friend Senator Roebuck. Consequently, I think it is basic to retain that. In fact, it is basic, in the light of everything that follows, and of all the subclauses. It is my point of view and I want to present it, Mr. Chairman.

The Chairman: Senator Roebuck, do I understand that the form in which you have presented your amendment is by the addition of certain words in the opening of clause 4?

Senator Roebuck: Yes.

The Chairman: Is that the way in which you wish it to be considered?

Senator Roebuck: Well, probably I could give it some more thought; not that my criticism of the word "permanently" needs any more thought on my part.

You see, subclause (2) of this clause says that if all of these (b), (c) and (d), are established, then permanent breakdown has been established. That is not common sense. It may not have been established. What the section should say, I think is, that the phraseology that I have used shall apply to (e) (i) and only "for any reason". Perhaps my amendment should be rephrased to make that clear.

Senator Everett: Mr. Chairman, may I ask Mr. Maxwell whether the judge, in considering the petition under clause 4, would not be required to define the word "permanent" in connection with the subclauses (a), (b), (c), (d), (e)—in other words he is going to have to turn to a dictionary.

Mr. Maxwell: Perhaps I could interject this. I think the word "permanent" is useful in indicating what Parliament really had in mind. It is permanent as distinct from temporary. Parliament has gone ahead and said "we are talking about permanent breakdown". And then it says "we mean by permanent breakdown these circumstances".

Senator Everett: Even if the judge defined the word permanent, more rigorously than in the subclause, he would still be confined by the terms of the subclauses?

Mr. Maxwell: That is right.

Senator Everett: Thank you, sir.

Senator Roebuck: I think the courts have a way of defining "permanent" pretty quickly,

but why should we leave it to the courts when it is right in our hands to make this clear?

The Chairman: In most of the legislation we have, we think we are making it clear; but almost every year, in the case of many of these bills which we enact after serious consideration, we find that we have to enact certain amendments. There is nothing like trial and error to prove out and that there may be some inherent weakness or confusion which will only develop in practice. We are not going to produce a perfect document this time, senator. We have not done so in the past.

Senator Everett: Parliament could use the word "breakdown" or "permanent breakdown" and it would have exactly the same effect in the operation of this section of law.

The Chairman: But I do not think that is the intention. The intention of Parliament is to say "is this thing likely to be of lasting duration or is there any chance of its being less than that?"

Senator Everett: That goes by the operation of clause 9.

The Chairman: But in getting the answer to that, you must look at the limits of what is said in clause 4.

Senator Everett: Yes, I agree with you, but it is the limitation set out in clause 4 that defines what "permanent" is, and not the dictionary.

Senator Grosart: Much as I dislike to disagree with Senator Roebuck, I would definitely agree that the word "permanent" should be left in. I think it has a very important significance, and it helps, as the Deputy Minister said, to define the intention of Parliament.

However, I wonder if subclause (2) is at all necessary. This is one which says that in any petition, if any of these circumstances described in subclause (1) are present, they are judged to be permanent breakdown.

The reason why I question this necessity is this, that I would read subclause (1) as saying that if you have two sets of conditions there is adjudged to be permanent breakdown by reason of—plus some secondary condition.

Now, subclause (2) seems to make nonsense of this, because it says that if these conditions are present there is permanent breakdown. I do not think this is what the draftsman really

meant. I will repeat this. You say "here are the conditions, under clause 4, it is permanent breakdown, you are living apart, by reason of (a), (b), (c), (d), (e)." Then you go further and say "if any of these are present". It is not a question of permanent breakdown plus living apart plus any of these conditions. There must be all three. If you have any of these conditions, you have permanent breakdown.

I have some other comments to make on other matters, if I may, later.

The Chairman: I wonder whether, in what you have said in dealing with "permanent", if you have given full consideration to the effect of clause 9(1)(d)(e) and (f)?

Senator Grosart: I think I have, Mr. Chairman.

The Chairman: It seems to me that if there is a petition for divorce based on clause 4 and the circumstances, any one of them related in clause 4, any one of those circumstances is established, the judge, in relation to a number of these conditions in clause 4, must then satisfy himself that there is no possibility of rehabilitation under clause 9(1)(b) within a foreseeable period, before he could make the determination that it is permanent and grant the divorce.

Senator Grosart: With all due respect, it merely says that if the condition of permanency in clause 4 is not fulfilled, he does not grant the divorce. Well, it is necessary, he must find permanency, cohabitation, as part of the—

The Chairman: I am saying that this finding that the circumstances have been established, the breakdown is permanent, must be considered in the light of clause 9(1)(d).

Senator Grosart: I agree, but I am not in the least bit impressed by clause 9(1)(d) because all that any one party has to say is "Your Honour, by no circumstances will I cohabit or live again with this person" and then there is the clearest possible evidence that there is no possibility of rehabilitation. Any party can make that assertion and make it under oath, and what is the judge to do?

Senator Thorvaldson: It may still be a lie.

Senator Grosart: It might be a lie, but it is the strongest possible evidence.

The Chairman: What do you suggest? We do not want to put in things that are meaningless. What do you suggest to stop people from lying?

Senator Grosart: I am not suggesting that one would keep people from lying.

The Chairman: They are under oath.

Senator Grosart: I am discussing how you can make this a better one. I am not suggesting the questioning of evidence in court. I am not a lawyer and I am in no way competent to discuss that.

The Chairman: This was your solution. You said that anyone could go in and say "under no circumstances will I go back and live with such and such a person" and that if that person gives that evidence and if the judge believes it, then, if it fits the circumstances under clause 4, he must grant the divorce.

Senator Grosart: With that I agree.

Senator Roebuck: He may change his mind occasionally, he may think it is permanent, and then...

Senator Grosart: The judge, as I understand the proceedings in court, will take the evidence before him and decide whether that party really means it or not.

The Chairman: He cannot do anything else. What else could he do?

Senator Grosart: I come back to this main point, which is, what is the necessity of subclause (2). I do not understand it. If the officials say to me that subclause (1) does not mean what I think it means, then I am satisfied. If they say to me it does not mean that you must have permanent breakdown, you must be living apart, you must have other conditions; if they say that is what they mean, I will agree that the bill says what they mean; but I will not agree with the principle.

Senator Everett: It seems to me that subclause (2) is purely technical, in that it places the onus on the respondent to rebut the evidence or to rebut the presumption created by the condition adduced in any one of the subclauses.

Senator Roebuck: There is no rebuttal here; this is irrefutable.

Senator Flynn: It is. You can bring evidence to the contrary.

The Chairman: I think there has been some misreading of subclause (2). It is, that these circumstances have been established to the satisfaction of the judge, then he makes the finding on fact.

Senator Everett: It is surely a presumption at that point.

The Chairman: It is not a presumption as to whether the circumstances have been established. That has got to be a finding of fact by the judge.

Senator Roebuck: And that is only whether they have been living separate and apart. Once they have been living separate and apart, then it is established that the breakup is permanent.

The Chairman: I think before the judge reaches this finding of fact he has to consider the effect of section 9(1)(d) that he can refuse the decree if there is a reasonable expectation that cohabitation will occur or be resumed within a reasonably foreseeable period. I think he has to make that decision as well.

Senator Roebuck: They may get back together, but at the moment that is the way the matter is drawn.

The Chairman: That is the moment the judge has to make his decision. He has not got a crystal ball in which to see ahead. Sometimes I wish judges had.

Now, Senator Grosart, you wanted to ask Mr. Maxwell a question.

Senator Grosart: I did ask a question as to whether my interpretation of the intention of the drafting of section 4(1) was what I took it to be. That is, whether you satisfied three conditions or you merely—as I may speak to it when we come to subparagraph (e), which I simply do not understand, if I may just retrace...

The Chairman: Senator Grosart, what we are dealing with at the moment is an amendment of Senator Roebuck's not made too clear as to where it is to be inserted. Is your motion to strike out the word permanent, Senator Roebuck?

Senator Roebuck: Yes, and to substitute at the end of the paragraph, after the word "petition", the words:

The parties having not cohabited within the three years preceding the filing of the petition and there appears no reason-

able expectation of a resumption of cohabitation within a reasonable period of time.

The Chairman: Now, Senator Grosart, we have not got down as far as subsection (e) yet. We are dealing with Senator Roebuck's amendment which is to strike out the word "permanent," which occurs in the opening language of the subsection (1), and then to add, following the word "petition" a couple of lines further on, the words:

The parties having not cohabited within the three years preceding the filing of the petition and there appears no reasonable expectation of a resumption of cohabitation within a reasonable period of time.

Now we are clear on what the amendment is and where it is proposed that it be inserted. Are you ready for the question on that?

Senator Grosart: I fully respect your ruling, Mr. Chairman, and I will abide by it, but I will point out that most of the discussion arising from the amendment has been on (e) and not on 4(1).

The Chairman: We have to deal with the amendment now and where it is proposed to insert it. You know what the amendment is and where it is proposed that it be inserted. Those in favour of Senator Roebuck's amendment raise your hands. Those who are opposed raise your hands. The amendment is lost.

Senator Roebuck: What was the count?

The Chairman: Well, there were two in support.

Senator Roebuck: There were more than that, were there not?

The Chairman: No, sir. All the rest were against. It was almost unanimous, Senator. However, cheer up. I have at times been on one side with everybody else on the other side.

Senator Flynn: Sometimes I have been completely ignored.

Senator Roebuck: I have stood alone often enough. I am not at all ashamed of it.

The Chairman: Now we revert to consideration of section 4. Are there any other amendments that are being proposed or does any person want to say otherwise in relation to section 4?

Senator Roebuck: I am going to move an amendment here that subsection (2) be struck out.

Senator Leonard: Mr. Chairman, this is not really what I should be bringing forward. Nevertheless, as we have discussed this matter our discussion has really been related, I would say, to clause (e) and probably somebody will want to deal with (e). I am not going to do so myself. I am quite satisfied with (e) as it stands, but I do think from the debate in the house and from the discussion here today that some of the amendments that we were suggesting to (3) and to (4) really should be taken under (e).

The Chairman: Well, let us reduce it in this fashion, then. Section 4(1)(a). Shall that carry?

Senator Grosart: I have one comment, if I may. I am not sure whether the officials read the Senate *Hansard*, but I did raise the question as to whether consideration had been given to the possibility of imprisonment in a jurisdiction other than in Canada under evidence and charges not acceptable in Canada, and I referred specifically to the possibility of a newspaper correspondent or a diplomat being imprisoned under circumstances that would not be acceptable in Canada. Now I am quite well aware that there are ameliorating conditions under section 9, as you pointed out repeatedly, Mr. Chairman, but I just raise the suggestion as to whether the words "in Canada" or "in a jurisdiction in Canada" or "under circumstances acceptable to Canadian law" might be added. I merely make the suggestion and leave it at that.

The Chairman: Shall section 4(1)(a) carry?

Hon. Senators: Carried.

The Chairman: Then shall subparagraph (b) carry?

Senator Grosart: Again, Mr. Chairman, I am sorry that, although I am not a member of the committee, I am rising as often as I am but I have given some study to this bill and I am interested in it. I raised the very minor question concerning subparagraph (b) as to the position of the comma after the words Narcotic Control Act. I wonder if the officials accept my suggestion that that comma be removed so that we do not have in this act a misstatement about another act, which would be the case, if my understanding of English grammar is correct.

Mr. Thorson: If I may say a word about that, Senator Grosart. There is no definition of alcohol in the Narcotic Control Act. We are thoroughly aware of that fact. However, there are two kinds of addiction that are described in this bill. There is addition to alcohol and addiction to narcotics as defined in the Narcotic Control Act.

Senator Grosart: Quite right. So the comma should come out. In any understanding of English grammar, that comma must come out. Let me be stubborn about this. It is a very, very minor point, but, if honourable senators will read this, they will have to be in very general agreement that, if we are going to make this an English sentence within the accepted standards of English punctuation, that comma should come after alcohol, which would then make the sentence read:

... been grossly addicted to alcohol, or a narcotic as defined in the Narcotic Control Act,...

It now reads:

... been grossly addicted to alcohol or a narcotic, as defined in the Narcotic Control Act,...

And I ask you to accept that.

Mr. Thorson: My only point was to make the observation that I do not think the legislation as written is capable of being misunderstood in view of the fact that alcohol is not included in the Narcotic Control Act.

Senator Grosart: Perhaps it is not capable of being misunderstood, but let us not make in one act a misstatement about another act.

Senator Roebuck: It is subject to misunderstanding.

The Chairman: Subject to what our law clerk says, we might regard the comma as being a typographical error in the printing and have it corrected as such.

Senator Leonard: Yes, we will take care of it that way.

The Law Clerk: I will correct that.

The Chairman: If the committee is satisfied to have it corrected in that way, that would simplify it.

Senator Roebuck: I thoroughly support Senator Grosart's argument that it should come out after the word Narcotic Control Act and go in after the word alcohol.

The Law Clerk: We can make that correction without any amendment being necessary.

The Chairman: Then shall subparagraph (b) carry?

Hon. Senators: Carried.

Senator Roebuck: It is carried with that change?

The Chairman: Oh, yes, but we do not need a formal amendment. We are going to do it administratively in the reprinting of the bill.

Now, shall subparagraph (c) carry?

Hon. Senators: Carried.

The Chairman: Subparagraph (d)?

Hon. Senators: Carried.

The Chairman: Now we come to subparagraph (e). Is there further discussion on this?

Senator Fergusson: Well, Mr. Chairman, I have a few words to say on this. I have already said most of what I wanted to say in the Senate. At that time I did not have any intention of making a particular stand on this point other than saying that I hoped that the department would consider more carefully some of the things that they had overlooked. However, I have received so many letters on this point since then that I feel I should say a little more now to the committee. To give the background to my thinking I would like to quote an article from the *Ottawa Citizen* of January 13, 1968, where it says:

The law, in Victorian fashion, doesn't regard her as a marriage partner so much as a creature in need of protection—which it provides sometimes with only limited success. It fails to recognize that the investment of her life and energy gives her a genuine claim to equity in the assets accumulated by marriage partners.

This concept of equity in the fruits of a marriage, shared equally, has been advanced by a five-man research group reporting to the Ontario government law reform committee as a method of disposing of property when a partner dies or a marriage breaks up.

This is why I want to bring this to the attention of the department. The research group mentioned in Ontario apparently is suggesting that consideration should be given to a wife in a case where assets have been accumulated through the marriage. By this I do not mean just the property which she

owned prior to the marriage but the property which has been accumulated through the marriage because I feel that the department has not given sufficient practical consideration to this matter. I had thought of presenting an amendment asking for the deletion of section 4 (1) (e) (ii) entirely but I am not sure that this is what I would really like to do. However, before making the suggestion I intend to make there are many reasons why I don't like the present setup and I should like to mention some of them. For instance, if we leave it to the provinces to decide on this division any action taken will be subsequent to a divorce action and the parties will certainly know that something is coming and it might be very easy for the husband to take action to divest himself of property which he knows the court might decide should go to the wife. This situation has been recognized in bankruptcy law and therefore we have provided protection in such circumstances, but no such protection is given to a wife in cases of divorce.

The Chairman: But surely, senator, this is a matter of the rights of the provinces?

Senator Fergusson: Yes, but I am mentioning it to stress the point that I am leading up to. I realize we have a conflict of laws and a multiplicity of actions, but I am simply saying to give the background that I would like to suggest that a section be added to this bill, instead of taking out section 4 (1) (e) (ii) providing specifically for the judge to deal with the property rights as between the parties taking into account at that time whatever the wife has contributed to the assets. Not only should this be done, but it should be done at the right time. For that reason I suggest that the department should give further consideration to this.

There might be a question of constitutional law involved, but surely that is also involved, and I am speaking now of property rights, where, according to this bill, a wife could be responsible on divorce and could be required to pay maintenance as set out in clause 11. The common law has certainly been interfered with in that matter.

The Chairman: But, senator Fergusson, I read in the papers recently where some of the leading women in Canada have commented on this as being an example of the progress made in achieving equal status for women. Some prominent women in Canada have been quoted in the papers as saying that this is a step in the right direction.

Senator Fergusson: I am all for it or indeed for anything that will give greater equality to women, but here you are taking something away from women without giving anything in return. I think at a time a divorce is granted some ruling should be made regarding the property rights of the woman. I cannot see how anybody would oppose that.

The Chairman: If you look at clause 11 (1) (a) you will see that it says that upon granting a decree *nisi* a judge may make an order requiring the husband to secure or to pay such lump sum or periodic sums as the court thinks reasonable for the maintenance of both or either (i) the wife, and (ii) the children of the marriage; is it your view that there is not sufficient latitude there?

Senator Fergusson: I do not think so because that lump sum is just for maintenance and I think the wife should be entitled to more than having maintenance provided for her. We must keep in mind what she may have contributed to the marriage; she may have given up a promising career which she cannot now re-enter having spent so many years running a home and family. I think in equity more should be provided for her. I also have in mind comments made by Senator Prowse when I made the same statement in the Senate. And at this stage I might refer him to a case which I mentioned before but did not refer to specifically, and that is the case of *Minaker v. Minaker*. If you look at Volume 657 of the cases filed in the Supreme Court of Canada and the documents filed and the transcript of evidence in connection with this case, you will find an example of how a deserving and devoted wife and mother was abandoned by her husband who appropriated her earnings and stripped her in law of any share of her earnings. This is one definite case that I know of; I know of others, but I refer to this one in particular. In this case she was not allowed to share in the earnings at all.

The Chairman: Senator, what you have just said is something that I don't think any person would quarrel with. They would support your view that something should be done but the question is how do we do it in a federal statute?

Senator Fergusson: Well, I appreciate the difficulty, but I would like to see some consideration being given to this point. I think that up to now ample consideration has not been given to the matter and I would like to

see the department give it more thought before this bill is passed.

Senator MacKenzie: Mr. Chairman, I have listened to the debate in the Senate and here in the committee this morning. It seems to me there are two matters raised on this section. The first has to do with the interest in property, and here I have a lot of sympathy for the point Senator Fergusson has raised. If anything can be done constitutionally to ensure that either husband or wife does get a fair share of the property that may be involved, I am in favour of it.

The other point has to do with marriage breakdown, and I gather from what was said in the Senate that there were rather strong objections to a deserting party taking advantage of this legislation. I think the fact of desertion or absence does indicate there may in fact be a marriage breakdown, and we all know of cases where individuals, usually men but sometimes women, do not want to permit their spouses to obtain separations of a legal kind, and refuse a separation even though all the grounds are available. So, I, for one, am interested in considering and giving effect to this view of marriage breakdown, I think after a period of either three or five years—and I would prefer the longer one myself, but that is immaterial. I think you have to disregard this question.

The Chairman: In the bill before us the period is five years.

Senator MacKenzie: It is five years?

The Chairman: Yes.

Senator MacKenzie: I would be glad to accept that.

Senator Lang: I suggest, Mr. Chairman, this discussion on this really should come under section 11, and I can conceive of an amendment to section 11 which might cover this.

The Chairman: When we come to section 11 we can deal with that.

Senator Grosart: I was going to suggest, when we come to section 11, that we strike out the words, "for the maintenance of" and merely allow it to read:

an order requiring the wife/husband to secure or to pay such lump sum or periodic sums as the court thinks reasonable.

I mention it in passing, but we will come to that later.

A more general objection—and I will try to put it as simply as possible—

The Chairman: This is in relation to paragraph (e)?

Senator Grosart: Yes, this is in relation to paragraph (e), and subparagraph (ii) necessarily comes into my argument. That the bill now says, honourable senators, whether it is generally recognized or not, and if I can read English, is that where there is a permanent breakdown, where the parties are living apart for three years “for any reason other than described in subparagraph (ii),” these are satisfactory for divorce. If that is so, what is the sense of all the other clauses? Take imprisonment, for example. If somebody is imprisoned for three years they are living apart for three years, and that situation is completely covered by this “for any reason”. The capital one refers to two years, but that is a minor thing. The alcoholic addiction one is three years. Why do we specify certain things, and then come along and say “for any reason”?

The Chairman: This looks like the basket.

Senator Grosart: It is more than a basket; it is a destructive clause.

The Chairman: A basket very often can be destructive.

Senator Grosart: I suppose it could be. But this is destructive of the apparent intent of the bill, because you might say if they are living apart for three years “for any reason”; and then in subparagraph (ii) you say, if they are living apart for any reason this satisfies the general requirements in subparagraph (i) that there is a permanent breakdown and that they are living apart.

What I am going to suggest, Mr. Chairman—as I have struggled with this a bit, trying to come up with an amendment that might, in my view, bring (e) more into line with the rest of the clause, and I have been successful—is that we stand (e). I cannot make a motion to that effect because I am not a member of the committee, but I would merely put it as a suggestion, and I would hope, in view of Senator Fergusson's remarks and some remarks I will make too, that the officials might consider taking another look at it. Because what I think is meant by paragraph (e) (i) is for any “good” reason, for any reason the court would consider coming within the scope of the act. It gives the power to

the court to do it “for any reason”, but I think there should be some kind of limitation there.

In discussing it in the Senate, Senator Roebuck gave me the impression that the intention of this was to cover certain other contingencies not covered in paragraphs (a), (b), (c) and (d), such as illness and so on. But at the moment this would cover, in the unhappy event of another war, a soldier overseas for more than three years—“for any reason”. We will have a lot of “Dear John” letters.

The Chairman: You are ignoring section 9 (1) (d).

Senator Grosart: I am not ignoring it for one minute. I am merely saying that clauses 3 and 4 set up specific grounds for divorce, as of right—subject, of course, to certain ameliorating circumstances.

The Chairman: But, senator, when you gave your example of a soldier overseas, in the event of another war, would circumstances be such that the judge would be able to say that he would refuse a decree in those circumstances, if the wife were applying, and say, “There is a reasonable expectation that cohabitation will be resumed within a reasonably foreseeable period”?

Senator Grosart: I can think of many cases where a divorce would be granted, where there had been a separation due to war, where the soldier had received a “Dear John” letter and had written back and said, “If that is the way you feel, when I come back I will find somebody else.” This would be reasonable grounds. But, surely, it is not the intention of this act to take the separation for three years “for any reason”? Even if a judge says, “I will refuse it because there could be some chance of resumption of the marriage,” the evidence before him will be that of only one party, the petitioner, and, generally speaking, an undefended action where the only evidence he has is that there has been this separation for three years “for any reason” and the evidence before him is there is no hope of this marriage carrying on.

The Chairman: Senator, you are not addressing yourself to section 9(1)(f).

Senator Grosart: No, I am addressing myself...

The Chairman: You have to look at section 9(1)(f) as well, because it reads directly on paragraph (e)(i).

Senator Grosart: I will be glad to read it, because I have already read it.

The Chairman: I am not suggesting merely an exercise, but I mean consider it in what you are saying.

Senator Grosart: Well, it surprises me to find our Parliament saying in an act that our judges should be fair and not unduly harsh. If I were a judge I think I would resent that. I would not want to be told by an act of Parliament how to make an act work. As a judge I would not want to be told that I must not be unfair or unduly harsh in my judgment. That is my answer, Mr. Chairman.

The Chairman: But, you are misinterpreting the language. This clause does not say that. It says that the judge has to determine whether he should refuse the decree if the granting of the decree would be unduly harsh or unjust to either spouse or would prejudicially affect the making of such reasonable arrangements for the maintenance, et cetera. Those are the circumstances under which he may do that. It is not that the judge is acting unreasonably here, or that you are asking him not to be unreasonably harsh. Under section 9 the judge, in making a decision as to granting the decree, has to decide that the granting of the decree in those circumstances is not unduly harsh or unjust.

Senator Grosart: Mr. Chairman, as I said earlier, I will not split hairs.

The Chairman: No, but you can afford to.

Senator Grosart: My colleague tells me to be careful, but I do come back to this point, that paragraph (e), particularly when coupled with subparagraph (ii), is much too sweeping, and especially when you look at clause 9 and other clauses. I would suggest to the officials that they take another look at it, because I believe this is a case where there is some haste to right a great many wrongs, which this bill will do—there is no question about that—we may be in danger of setting up another area of wrongs.

That brings me to subparagraph (ii), which is:

by reason of the desertion of the petitioner, for a period of not less than five years.

I would think from reading the bill that the intention here is to say that if for any reason there is desertion the aggrieved party may sue within three years, but a limitation will be

put on the deserter, or a man who deserts his wife, and he cannot sue for five years. So, even in the bill there is some indication of regarding desertion as an offence, or at least as a cause, which does not have the same rights as the other causes. I suggest that there is an aberration in draftsmanship here. I agree with the principle. I agree that the deserter should not have the same rights, and that he should have to wait longer, and I am not for one minute suggesting that he should never get a divorce. A man may have deserted his wife at some time in his youth when he may have had a pretty good cause for deserting her. I am not suggesting that he should be permanently barred from getting a divorce merely because he committed that marital offence at one time. But, I do say that it does not seem to make sense to pick out this one offence of all the offences, particularly those in clause 3, and say: "We will take this one fellow, this deserter, and give him special privileged position by this bill. He can use this marital offence as a ground for divorce, but the rapist, the sodomist and the bigamist under clause 3 cannot." This, as I understand it, is precisely what the bill says.

It says to a person: "These are the grounds you can use". They are the grounds for divorce set down specifically in clauses 3 and 4, and they will tend to become in the mind of the public, in the mind of the bar, and in the mind of the bench, grounds for divorce as of right. I say there is nothing wrong with that, but here we are saying to the deserter, who is not the worst of the offenders: "You are going to be a privileged person. You are going to be the one who can use your marital offence as ground for divorce."

I suggest to the officials that if they were to look at this again they would come up with some wording that would be more in the spirit of the bill.

The Chairman: Senator, if you accept the principle that breakdown is a ground for divorce, then what I understand you to propose is, even though you agree that there is a breakdown and no possibility of reconciliation, that the only one who can seek release from that is the aggrieved person. Now, there is something anomalous in saying that.

Senator Grosart: With due respect, Mr. Chairman, I have not said that.

The Chairman: I think that is the effect of what you said.

Senator Grosart: No, I made it quite clear that I regarded a deserter as having the right in due course.

The Chairman: Is five years enough? Is that "in due course"?

Senator Grosart: I think five years is enough. I am not objecting to that.

Senator Macdonald: Let us be logical about this, Mr. Chairman...

Senator Grosart: I am objecting to making it one of the grounds. That is all I am saying.

The Chairman: Senator Lang?

Senator Lang: I may have a suggestion of some validity here. I can see Senator Grosart's position, and I think that this section, read in conjunction with section 9, involves an inconsistency in draftsmanship, but I think the problem may be contained in subsection (2), in the presumption that is established there. These various sets of circumstances, and the one that Senator Grosart is referring to particularly, provide for a time limitation.

It appears to me that what the section is attempting to say is that if there is a permanent breakdown and certain other conditions are attendant upon it, then grounds exist, and then it goes on to say that a breakdown shall be presumed under various conditions—not permanent breakdown.

In other words, the time periods referred to in the subsections delimit or define the grounds, but the last subsection merely says that a breakdown or a precondition exists—not a permanent breakdown, but a breakdown—under one of those named conditions.

I suggest that Senator Grosart's objection can be overcome by removing the word "permanent" from subsection 2, while leaving it in the first paragraph of subsection (1), and thereby placing the onus on the judiciary to determine whether or not that is permanent. This is consistent with section 9.

The Chairman: I do not think so, senator. I think section 9(1)(d) has to be considered in the light of the judge's arriving at a conclusion before subsection (2) comes into operation.

Senator Leonard: I wonder whether we could hear from the departmental officials...

Senator Roebuck: I would like to say something before we hear from the department.

The Chairman: I promised Senator Macdonald that he would be allowed to speak next.

Senator Macdonald: I yield.

The Chairman: The senator yields.

Senator Roebuck: Yes, I would like the department to explain how they can reconcile these two things. I am speaking along the same lines on which Senator Leonard and Senator Grosart have spoken Section 9(1)(d) reads:

where a decree is sought under section 4, to refuse the decree if there is a reasonable expectation that cohabitation will occur or be resumed within a reasonably foreseeable period.

Section 4(2) reads:

On any petition presented under this section, where the existence of any of the circumstances described in subsection (1) has been established, a permanent breakdown of the marriage by reason of those circumstances shall be deemed to have been established.

Now, you cannot read the two together. One says that the breakdown is permanent and is established and is irrebuttable—there is no question about that—but when we turn over here we see that if the judge finds it is not broken down, why, then he can refuse a decree. We cannot let those two things stand, one fighting the other.

The Chairman: They do not. I think they are complementary.

Senator Roebuck: I was talking about (d) on page 7.

The Chairman: Section 9 commences by saying:

On a petition for divorce it shall be the duty of the court.

Senator Roebuck: Exactly.

The Chairman: Paragraph (d) is:

where a decree is sought under section 4, to refuse the decree

in certain circumstances, even though otherwise under the provisions of the act one might be entitled to a decree.

Senator Roebuck: This defines something totally different from what section 2 says.

The Chairman: No, he can make that binding.

Senator Roebuck: Why put that kind of a problem on to the court. This whole thing ought to be redrawn.

The Chairman: This is what we are looking at. Shall we hear from Mr. Maxwell?

Hon. Senators: Agreed.

Mr. Maxwell: Perhaps it would help Senator Roebuck if I made this observation. It does not necessarily follow that because there has been a permanent breakdown—to use the term of our bill—there will necessarily be relief. I think everybody familiar with this whole area recognizes that there are all kinds of marriage breakdown, but whether or not there should be relief in any particular situation is a question which in the end under our bill is left to the court on the basis of the principles set forth in section 9 paragraphs (d), (e) and (f). I am not sure that I am meeting your point; senator, but I think I am. In short, there may be breakdown—indeed, in the terms of our bill permanent breakdown—but this does not necessarily mean that the parties will get relief. They will get relief only if they meet the tests described. I submit that, on that view of the matter, there is no inconsistency, and, indeed, I suggest no real difficulty that a court will encounter in applying the tests.

Senator Roebuck: Do you support the idea of the court being bound by a statement that something shall be deemed that is not true? That is what this says.

Mr. Maxwell: If I may deal with that, I think the problem is this. You made the point this morning that one would have to be almost omniscient to determine whether or not any particular breakdown is in fact permanent. What has happened is that Parliament has come in with a bill and courageously takes the position that it is going to define what is meant by “permanent” because it is not a question that can be left to the judiciary to determine. I suggest that judges left uncontrolled would have the gravest difficulty in defining, in a particular case, whether there has or has not been a permanent breakdown.

Senator Roebuck: I agree that it is impossible to define it.

Mr. Maxwell: I think that it may well be, and that is why we think this kind of provision is necessary. Somebody or other has to cut it off, somebody has to decide this situa-

tion, and, if this bill is passed, Parliament will have done that.

Senator Lang: Does the deputy minister concur in the suggestion that subparagraph (ii) renders meaningless the two conditions contained in the first part of subsection (1). Is not this at the heart of the problem? Why do we mention permanent breakdown at all if we say these conditions shall mean permanent breakdown? Why do we not just say there are grounds for divorce if these things happen?

Mr. Maxwell: I think we dealt with that a while back, as I remember it. I think I said that while the word is not strictly necessary—in short I am not sure that it has any legal significance—it does help one to understand the philosophy behind this bill. Parliament is here saying, “We are prepared to say permanent breakdown should be dealt with in this way, and we are prepared to say what permanent breakdown is”.

Senator Lang: Are you not trying to say, “We leave it to the courts to decide what permanent breakdown is”?

Mr. Maxwell: Parliament is here defining what it means by “permanent breakdown”.

Senator Lang: You are saying that you have got to have permanent breakdown but also you have to have these other circumstances, and that if you prove these other circumstances you have got permanent breakdown. You are going round and round the tree.

The Chairman: It seems to me that we are getting at cross purposes. What section 4 says is that in a petition for divorce if you have not any of the grounds set out in section 3 you can set out any one of these grounds in section 4; but at some stage or other you will come to trial and evidence will be produced establishing one or other of these grounds. Before the judge makes his determination it may well be that those grounds are sufficient to show that the marriage had been permanently broken up, but the judge has a duty to look at section 9 and in certain circumstances he must refuse a decree.

Senator Lang: If that is the case why not say “living separate and apart” and that the marriage has permanently broken down, nothing to do with (a), (b), (c), (d) and (e), if that is the intention of the legislation.

Senator Leonard: The intention is really the opposite. The intention is that you prove one or other of these things; then you have proved your marriage breakdown.

The Chairman: That is right.

Senator Everett: I am a little behind the times. It seems to me that we have got on to subsection (2), but I am still on subsection (1)(e). Could we return to that and ask Mr. Maxwell to answer the point raised by Senator Grosart, who I believe suggested that paragraph (e)(i) be struck out? That says:

for any reason other than that described in subparagraph (ii), for a period of not less than three years.

Senator Leonard: I do not think his suggestion was to strike it out. What he said was broad enough to cover all the other lettered paragraphs.

Senator Grosart: If I may—

The Chairman: Just a moment. Senator Everett asked a question. You are expecting an answer from Mr. Maxwell, are you?

Senator Everett: It was on the question raised by Senator Grosart, so perhaps Senator Grosart could define what his question was. I should like to hear the answer to it.

Senator Grosart: As I am being quoted, and I think paraphrased not quite correctly, perhaps I should clarify my position. I did not suggest that paragraph (e) be deleted.

The Chairman: I thought that was clear in what you said.

Senator Grosart: I did suggest that it be reconsidered.

Senator Thorvaldson: What do you mean by reconsidered?

Senator Grosart: In the light of the discussion here, particularly in the light of this one point that paragraph (e) suddenly says that if people have been living apart for any reason it is presumed to satisfy all the other conditions in section 4.

Senator Thorvaldson: Living separate and apart for a certain period of time. I think we must be accurate in our terms.

Senator Grosart: Living apart for three years for any reason. I say that this makes a mockery of the apparent restrictions in the rest of the bill, because you emphasize this with subclause (2) where you say that if the

petition is presented for any reason, including living apart for three years, that is *ipso facto*, *per se*, evidence of permanent breakdown on the other conditions required. That is my objection.

Senator Everett: Mr. Chairman, I should like to hear Mr. Maxwell's answer on the point.

The Chairman: We have been struggling for quite a while, but now, Mr. Maxwell, you finally have the floor.

Mr. Maxwell: First of all, may I say this, that paragraph (e), I suppose, in that sense is a basket item, if I can use that terminology and it is clear what I mean by it. It covers of course cases that would not fall within the preceding subparagraphs.

You could presumably delete all of the subparagraphs and simply have a right to bring a petition after the parties have been living separate and apart for three years. I suppose that would produce a rough kind of justice, but the legal result would be completely changed. For example, let us take a look at paragraph (b).

That paragraph talks about alcoholism and drug addiction. Now, there is no requirement under (b) that they be living separate and apart for three years. They may well have been living separate and apart for only a matter of months. In short, a spouse may stick with the other spouse, although that spouse has been addicted for a long long time, but suddenly may come to realize that this is pointless, so they separate, and then the wife or the husband brings the petition. You can wipe that out if you wish to do so, but I do not think the result would be a desirable one.

And so on, you could examine all of these prior subparagraphs.

Senator Macdonald: What about (c), sir?

Senator Roebuck: Disappearance.

Mr. Maxwell: Yes, that has to do with disappearance. That is in there to some extent as a protection, because we felt there was some argument where a spouse disappears. It is not entirely clear that they may be living separate and apart. That spouse may have died. We do not know about that. There is just no knowledge of where the spouse is. So we felt we ought to put in a special provision to cover that situation. Talking about living separate and apart presupposes the existence

of two spouses living separate and apart. Paragraph (c) covers the disappearance of the spouse. The spouse may be living or dead.

The Chairman: It would really cover him if he is dead.

Mr. Maxwell: We do not know.

Senator Leonard: Does it not have to be read with clause 9(1)(f) whereby there are certain provisions that really have to be read in or in conjunction with clause 4(e)(i)?

Mr. Maxwell: Senator Leonard, in that regard, I think it is better to put it this way, perhaps, that the relief under clause 4 is discretionary. Once you establish the permanent breakdown, there is still a question as to whether or not you are going to get relief. You may only get relief if you meet the other requirements of the act. These requirements of course are specified in particular in paragraphs (d), (e) and (f) of clause 9.

Senator Leonard: Yes, but there is special provision dealing with clause 4(e)(i).

Mr. Maxwell: Yes.

Senator Leonard: You have to bring in the question of it being unduly harsh or unjust and prejudicially affecting the making of reasonable provisions for maintenance.

Mr. Maxwell: Yes.

Senator Leonard: It seems to me that clause 4(e)(i) is more directed to the kind of occasion where one of the parties is in an institution for a period of time. I do not see that kind of case covered in any of the other provisions of clause 4.

Mr. Maxwell: That is quite true.

Senator Leonard: But the wording of clause 9(1)(f) fits into such a case under clause 4(1)(e).

Mr. Maxwell: It does.

Senator Grosart: Mr. Chairman...

Senator Thorvaldson: Has Mr. Maxwell finished?

The Chairman: Will you reconsider that, Senator Grosart?

Senator Grosart: No, I will not reconsider. I would like to ask my last question. I think it may be helpful to Mr. Maxwell. My last question is, legally, does clause 4(1)(e) mean

that if a couple have been living apart for three years, for any reason, and both want a divorce, and are prepared, whether they have children or not, to make the arrangements that are not harsh or unjust to either party, is it the intention to say that, by consent, that any couple may obtain a divorce, for any reason, after three years living apart, under that section? Is that what it means? Is that the legal interpretation?

Mr. Maxwell: It may be the legal result. Certainly, the question of whether they consent to it or not is not too relevant, it is a matter of law. But I think that would undoubtedly be the legal result, on the facts you have stated.

Senator Everett: I am suggesting that it is not fair to take a section out of the act which defines breakdown and ignore all the remedies under the act for that breakdown. There is ample protection. You can find a breakdown under clause 4, in the way that Senator Grosart suggests, but that does not by any manner of means mean that under the operation of this act it is going to result in a divorce. Far from it, in the case he just suggested—far from it.

The Chairman: Well, we have had quite a discussion on this subparagraph (e). Are there any amendments or are you ready for the question?

Senator Roebuck: I want to make one point. I have said in the house that I do not like putting in cold type the fact that a man or a woman may take advantage of his or her own wrong. I would like to amend that section 4(1)(e) by striking out all the words of subparagraph (i) thereof after the words "for any reason" in lines 20 and 21, the words "other than that described in subparagraph (ii)". That will eliminate that. Then I would like to eliminate subsection (2) entirely.

The Chairman: Let us keep to subsection (1)(e) for the moment. What is the amendment you propose in relation to subsection (e)?

Senator Roebuck: I would like to strike out of subparagraph (i) the words "other than that described in subparagraph (ii)".

The Chairman: Yes.

Senator Roebuck: Now, what is described as subparagraph (ii) is this:

(ii) by reason of the petitioner's desertion of the respondent, for a period of not less than five years, ...

My argument is that it is positively immoral to state here in cold print that a man may take advantage of his own wrong. Then I would like also to strike out, and this is what we have been discussing for so long, subsection (2) in its entirety.

The Chairman: Wait a minute now. We are not dealing with subsection (2) at the moment. These amendments have to go in their order, otherwise we will get into a horrible mess. We have an amendment proposed to this subparagraph (e) which would in effect strike out all the references to the specific right of the petitioner who has deserted his spouse being able at any time to apply for a divorce.

Senator Roebuck: I would like to answer that.

The Chairman: May I point out the significance of it? If you strike out the part that the senator has been talking about, then the subsection (e) would simply read:

(e) the spouses have been living separate and apart for any reason for a period of not less than three years immediately preceding the presentation of the petition.

That would mean that either of them could proceed within three years.

Senator Roebuck: And that is good.

The Chairman: Within three years instead of within five.

Senator Roebuck: That is fine.

Senator Leonard: Where the guilty person is getting the benefit is under (2), is that not so? And that is desertion for five years. The husband who has deserted the wife can still apply after five years.

The Chairman: But, if we strike off what Senator Roebuck is proposing...

Senator Roebuck: What I am trying to get at is we should abolish this thing about the culpability of either party and let either party apply for any reason, and, if the opposing party raises the point of who deserted whom, he will raise the entire question then and the judge can deal with it as he sees fit. That would be very much better than bringing up this question of who has deserted whom.

Senator Lang: I would support Senator Roebuck's amendment here, but I would only

support it on the basis that subsection (2) was to be removed.

The Chairman: We have not got to subsection (2) yet.

Senator Lang: I think they are interlocked.

The Chairman: We can only deal with one amendment at a time.

Senator Lang: I am not in favour of a divorce on consent after three years, and that is what we would have. If we leave in subsection (2), it would presume marriage breakdown.

The Chairman: We have a proposed amendment to subparagraph (e) by Senator Roebuck; that amendment is to strike out (ii) which deals with any right to apply for divorce by the petitioner who has deserted his wife and it simply leaves in (e), that the spouses have been living separate and apart for any reason for a period of not less than three years immediately preceding the presentation of the petition. I think it is clear what is meant by that. Those who support the amendment?

Senator Lang: I object to segregating those two sections. I cannot vote on that.

The Chairman: There is only one way of objecting. If you object...

Senator Lang: I will move to amend Senator Roebuck's amendment by including the deletion of subsection (2) of that section.

The Chairman: I rule your amendment out of order.

Senator Everett: I think Senator Lang surely has a case here, Mr. Chairman, because to amend subsection (i) and then not amend subsection (ii) would make it meaningless.

The Chairman: We are not making any decision at the moment in relation to subsection (2). We will deal with that immediately next.

Senator Everett: Let us say the amendment he is suggesting to subsection (ii) is lost, then in subsection (ii) you would have a reference to subsection (i) which would be meaningless.

Senator Leonard: We are talking about Roman numeral (i) and Roman numeral (ii), are we?

The Chairman: Senator Lang has moved an amendment to include in the amendment to

subparagraph (e) the striking out of subsection (2), and I say we have got to take them in order, and I have ruled his amendment out of order.

Senator Leonard: There is a confusion in some of our minds that he might be referring to Roman numeral (ii). There is no necessity for subparagraph (ii), if by any chance this amendment should carry, because you do not need to have anything other than living apart for three years.

The Chairman: That is right.

Senator Thorvaldson: Mr. Chairman, I just wanted to say that we have listened to the arguments against this section for quite some time. There may be one or two of us who would like to support the section.

The Chairman: I am just putting it to a vote right now, Senator.

Senator Thorvaldson: I am hoping before you vote that you will allow some of us who are in favour of this section as it is to support it by argument. I will only take one or two minutes.

The Chairman: Go ahead.

Senator Thorvaldson: In regard to the argument that it would be wrong to allow a person who is a deserter to have a remedy, I think that is quite inconsistent with the facts of life as known to every lawyer who has practised over a life time, as some of us have. It may sound bad that a deserter should have any rights to divorce his spouse, but, if you look at life itself and the facts as we know them, then this section should be supported as I do support it.

When we talk of deserters for instance, people think of only men being deserters. There are no end of women who marry a rogue of the worst kind. Every one of us knows that to be a fact. What can such women do? Is it not a wonderful thing for a woman to at least after five years have the right to petition for a divorce, particularly where in section 9(f) you give the safeguard which is given there?

I suggest to those who want to knock out this section (e), that although you can perhaps base a good argument on the fact that a deserter is a bad person and so should not have rights, nevertheless you cannot argue this without referring to section 9(f). I just wanted to put that point across, Mr. Chairman. In

my own experience I have known dozens of cases where a person was married to a rogue—and the rogue might not be only the husband; in many cases it is the wife—and had no remedy whatsoever. Now those people are given a remedy and I agree with the section and I hope it stays in here exactly as it is.

Senator Cook: I have just one point to make in support of that. The alleged deserter has in many cases contracted a common law marriage and he might have innocent children who will be involved as well. Why not let him get divorced?

The Chairman: Those in support of Senator Roebuck's amendment please raise their hands. Now, those who are opposed?

The Clerk of the Committee: Seven to five against.

The Chairman: The amendment is lost. Then we come to subsection (2). I would suggest that if we finish subsection (2), if we are likely to in the foreseeable future, to use the language of the act, we could then consider the matter of adjournment. We have already had discussion on subsection 2 and there is Senator Flynn's motion to strike it out.

Senator Roebuck: What is the use of making a motion here? You will support the bill.

Senator Lang: Well, I will make a motion to strike out subsection (2) because, with all respect to the departmental officials, I think it is bad legislation. I feel I would have great difficulty if I were a judge sitting on the bench and faced with the dilemma of interpreting this. It is in my view a built-in difficulty in that it does not say what it is intended to say and goes around the back door by raising the presumption of a permanent marriage breakdown and then providing conditions rendering meaningless the first part of the section.

The Chairman: Your motion, Senator Lang, is that we strike out subsection (2)?

Senator Lang: I am in favour of the grounds for divorce as set out in the section, but I don't want them accompanied by something which the judiciary has to interpret as permanent marriage breakdown. With subsection (2) that prerequisite is gone, and we are getting very close to divorce by consent.

Senator Leonard: With all respect to my honourable colleague and former roommate I think the drafting is good.

The Chairman: I think so too. Now Senator Lang has moved an amendment to strike out subsection (2) of section 4. Those in favour of this amendment please indicate accordingly. Now, those contrary? The amendment is lost. Shall subsection (2) carry?

Hon. Senators: Carried.

The Chairman: Now I think it is time to adjourn and I would suggest that we adjourn until the Senate rises today, at which time we will reconvene.

Senator Flynn: Will we have the minister before us then?

The Chairman: I doubt if we will have the minister before tomorrow.

The committee adjourned.

Upon resuming at 4.00 p.m.

The Chairman: I call the meeting to order. We have a quorum and our departmental officers have arrived. We had got as far as section 5. Shall section 5, subsection (1) carry? That is on the jurisdiction of the court?

Hon. Senators: Carried.

The Chairman: Shall subsection (2) (a) and (b) carry?

Hon. Senators: Carried.

The Chairman: Now, section 6 on domicile. Shall subsection (1) of section 6 carry?

Hon. Senators: Carried.

The Chairman: Shall subsection (2) of section 6 carry?

Hon. Senators: Carried.

Senator MacKenzie: May I ask one question.

The Chairman: Yes.

Senator MacKenzie: Does that raise any complications in terms of defining domicile in a matter of this kind?

The Chairman: You mean generally?

Senator MacKenzie: Yes.

The Chairman: This rule is only for purposes of this statute.

Senator MacKenzie: I know that, but this is to provide a woman with a domicile for this statute.

The Chairman: That is right.

Senator MacKenzie: Outside the jurisdiction, as it were.

The Chairman: Well, it is quite apart from the general rule.

Senator MacKenzie: I am just asking whether it does. It was suggested to me by a colleague of mine that it might raise complications in law, and I am just asking these gentlemen whether they had foreseen any complications? I have not foreseen any myself. It looks to me to be pretty straightforward.

Mr. Maxwell: Subsection (2) of section 6 has, of course, a slightly broader import because its purpose is to assist in determining marital status in Canada. It does apply somewhat more broadly than merely in respect of a petition for divorce under this particular act, but in answer to your question, at the moment I do not think it should cause any special problem. Of course one cannot be certain about these things, but I do not think so.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Section 7, dealing with procedures here on presentation and hearing of petitions. Section 7(1), which includes subparagraphs (a), (b) and (c). Shall these carry?

Senator Roebuck: My only comment here is that unless we widen the jurisdiction of the courts to take in the county court, this is just window dressing. I have heard hundreds of cases in which we have asked the parties whether there was any chance of a reconciliation and their answer was always no. Over the years nobody has ever said yes.

The Chairman: That is right. If they get that far, well—

Senator Roebuck: Exactly. There is no chance.

Senator Thorvaldson: Mr. Chairman, I would like to agree with Senator Roebuck on that and say further that very few divorces go through legal offices in this country without every effort having been made to reconcile the parties.

The Chairman: That is right. Subsection (1) carries. Shall subsection (2) carry? This is the certificate that should be endorsed on the petition.

Hon. Senators: Carried.

The Chairman: Section 8 has to do with the reconciliation proceedings.

Senator Roebuck: That is in the same category.

The Chairman: Yes. This has to do with how the judge shall perform his functions. Shall section 8 carry?

Senator Roebuck: It would not do any harm.

Hon. Senators: Carried.

The Chairman: Section 9. We have had a lot of discussion on this this morning, dealing with the additional duties of a court. Shall section 9(1)(a) carry?

Senator Aseltine: This was the section I objected to when I was speaking to the bill on second reading.

The Chairman: That is why I called section 9(1) (a), because I knew there was an objection you had made on that point. Now, what have you to say, Senator?

Senator Aseltine: I did not know what to make of the word "admissions" in there in subsection (1)(a). When I was speaking on this point I drew attention to the fact that in the Western Provinces, particularly in the Province of Saskatchewan, when a divorce had been commenced by a written summons, statements of claim were served on the defendant respondent and defendant co-respondent, even though they were just called defendants in the action. We frequently, under our rules, examine for discovery the defendant respondent or defendant co-respondent and after the local registrar gives them the usual warning they are asked certain questions that have to do with their infidelity as charged in the statement of claim. Now, if they wish to answer they may do so and when the case is set down for trial and the evidence is being submitted, certain questions and answers out of the examination for discovery are admitted as evidence and frequently the answers are admissions of the infidelity.

If this subsection means what I think it means, it is going to interfere to a considera-

ble extent with the proofs that we are required to produce in a country where the population is scattered and the distances from the courts are great and where it is impossible to obtain the evidence, we will say, by employing detectives and that kind of thing. So I would like to know what the idea of the department is in drafting this subsection as it is drafted.

The Chairman: Senator, I should tell you that in this subsection when the bill was considered in the Commons it did not include the word "solely". The word "solely" was an amendment which was put in on consideration of the bill, and I think the feeling which gave rise to this being added was to provide for some evidence of corroboration which would make the admission admissible in evidence. Otherwise if it remained without the word "solely" those admissions would not be admissible in evidence. Is that correct?

Senator Aseltine: I would like to ask Mr. Maxwell if the idea behind this was to legislate against agreements to get a divorce. Was that the idea behind it?

Mr. Maxwell: Senator, in this regard I think what we are endeavouring to do here is to put admissions, whatever kind they may be, whether they be in formal pleadings before the court, whether they be obtained by examination for discovery or, indeed, whether they are simply ordinary admissions made at a cocktail party, on the same basis because we can see no justification for not putting them on the same basis. If you ask what the basis is, it is this: These admissions do have evidentiary value and may be admitted but they in themselves would not be sufficient. There would have to be some other evidence in addition to the admission.

Senator Aseltine: But I suppose there always is some corroboration.

The Chairman: In some material way. Shall section 9, subsection (1) (a) carry?

Hon. Senators: Carried.

Senator Roebuck: Before we leave that, frequently the respondent and the co-respondent both gave evidence admitting that they were living together and that they had children and all that sort of thing. We had many cases here where we accepted that kind of evidence. It is true we have had the evidence of the petitioner as a rule which I suppose is corroboration to some extent. Would that rule out both of them?

Mr. Maxwell: No, it rules out any admissions in the situation where they come under the hearsay rule. It would not rule out direct evidence by a witness in the witness box because such evidence is not an admission in the sense that the term is used in this provision.

Senator Aseltine: Frequently the co-respondent is subpoenaed.

Senator Roebuck: May I ask Mr. Maxwell—I haven't taken cases of this kind; I left them to others who probably liked them better—but somewhere in my memory I seem to recall a provision in the rules of Ontario which prevents the use of an admission made on examination for discovery.

Mr. Maxwell: At one time there was a provision in the Ontario rules which read like this, and I will quote it to you—

At the trial admissions of a matrimonial offence made in pleadings or upon examination for discovery or upon a cross-examination on an affidavit shall not be accepted as sufficient proof of a matrimonial offence.

That was a provision that was in the Ontario rules. Actually it was changed, if I remember correctly, in 1950 because the rules committee felt that it was a substantive provision and not a procedural provision.

The Chairman: Might I refer you to Cartwright on Divorce, Third Edition, at page 70, where it says:

Former Ontario Rule 787 provided that an admission made on examination for discovery or on cross-examination on an affidavit was not alone sufficient evidence to enable the court to grant a decree, but after a similar rule was held *ultra vires* by the Saskatchewan Court of Appeal (v) the rule was amended and this provision no longer appears. Admissibility of evidence is a question of law and not merely practice. However, it is unlikely that a court would grant a decree in such case without some corroborative evidence.

Senator Thorvaldson: Might I just ask Mr. Maxwell this question, as this is what really bothered me about the section. Mr. Maxwell, you say you are quite sure that despite the injunction against admissions, nevertheless an admission in court in different from admissions in sworn testimony, say, an Examination for Discovery?

Mr. Maxwell: I am saying, senator, that direct testimony by the party of his adultery is not an admission within the meaning of the act. It is direct evidence of fact in issue. "Admissions" is a technical term. It has to do with a well-known exception to the hearsay rule. Admissions are always acceptable as evidence against the person who makes them, and it is an exception to the hearsay rule. Otherwise you could not have evidence on admissions.

Senator Thorvaldson: I quite understand that.

Mr. Maxwell: But where the respondent comes into the box and says, "Yes, I committed adultery last night," that is not an admission. The layman would call it an admission, but it is not an admission in the sense of an evidentiary admission. It is direct evidence on a fact, under oath.

Senator Aseltine: But an Examination for Discovery is under oath too.

Mr. Maxwell: It is a special form of admission, Senator Aseltine, as I understand the principle. It is a way in which you can get formal admissions before the court, but these are still admissions and they do not constitute direct evidence. The only way you can get direct evidence is to put your witness in the box and interrogate him before a judge, with cross-examination by counsel.

Senator Thorvaldson: I think it is very good to have this statement by Mr. Maxwell on the record, Mr. Chairman, because I have an idea it might be necessary to use it in some courts.

The Chairman: That is all right, senator; we do not mind being helpful.

Shall subparagraph (b), on page 7, carry?

Senator Everett: Could I ask Mr. Maxwell whether an agreement by parties to a marriage under section 4(1)(e) to live apart that resulted in an action after three years, because they did live apart, would be collusion under section 9(1)(b)?

Mr. Maxwell: I would say, on those facts, no.

The Chairman: Does subparagraph (b) carry?

Hon. Senators: Carried.

The Chairman: Subparagraph (c), on page 7, shall it carry?

Hon. Senators: Carried.

The Chairman: Subparagraph (d), on page 7, carried?

Hon. Senators: Carried.

The Chairman: Subparagraph (e), on page 7, carried?

Hon. Senators: Carried.

The Chairman: And subparagraph (f), on page 7, carried?

Hon. Senators: Carried.

The Chairman: Now, subsection 2, on the question of condonation. Shall this carry?

Senator Roebuck: It is a most advisable section.

The Chairman: Yes. Carried?

Hon. Senators: Carried.

The Chairman: Subsection 3, on page 7, (a) and (b), shall they carry? This is the method of calculating the period of separation.

Senator Roebuck: This is from the English act, and it seems to be working there.

The Chairman: Yes. Carried?

Hon. Senators: Carried.

The Chairman: Section 10, this provides for interim orders. Shall section 10 carry? Any questions?

Hon. Senators: Carried.

The Chairman: Section 11.

Senator Roebuck: When we come to section 11, I have something to say there. This is the section upon which my good colleague Senator Fergusson spoke this morning. Surely, a woman is entitled to more than just a meal ticket? She may have worked for many years along with her husband, she making the home and the husband making the money, and the two of them accumulating an estate; and yet, by common law, in the case of a divorce she gets nothing.

Senator Fergusson has protested against this for a long time, and I can see the justice of her plea. I am going to move, Mr. Chairman, that section 11(1) be amended by adding at the end thereof after subparagraph (c) the following subparagraph:

(d) an order providing for the division of the marital property of the parties

between the petitioner and the respondent as each is in equity entitled.

Now, that would give the court the power to inquire as to the contribution made by the husband and the contribution made by the wife in order to be able to make an equitable division between them.

Senator Pearson: Would that cover a common law wife?

Senator Roebuck: No.

Senator Leonard: There is no such person.

The Chairman: Now, what have you decided, Mr. Maxwell?

Mr. Maxwell: Well, I suppose one of the first problems in considering an amendment of that kind is to consider precisely what is meant when you speak of "in equity entitled". I would have thought that a reference of that kind would normally involve a reference to the rules and principles developed by the Court of Chancery in England, and to the principles of equity as those of us who are trained in the common law understand those concepts. Of course, if that is what is meant, it would result in no change whatever because, if I can put it this way, marital property—again, I am not quite certain what that means—belongs either to one spouse or the other spouse, or it belongs to them in some sort of joint ownership. It has to belong to them in one of those three ways.

Senator Roebuck: Oh, no. We have often recognized the rights of the woman when she has contributed or has provided a certain amount of the money with which the husband buys the piece of property. I think you can find a good many cases in which she has succeeded.

The Chairman: Then, she would have a right of action in our provincial courts.

Mr. Maxwell: That is what I was coming to. If this is simply a reference to the existing laws of equity—and I assume that that is what is must mean...

Senator Roebuck: No...

The Chairman: You have used the words "in equity entitled".

Senator Roebuck: I am referring to "equity" with the meaning that is found in a dictionary. Perhaps that phrase "in equity entitled" should be changed to "in justice

entitled". That would get away from the use of the word "equity".

Mr. Maxwell: Then I think, senator, you would have this difficulty in that I do not know how anybody would know what it meant. I do not know how the courts would interpret that provision.

Senator Fergusson: Could you substitute "fairness" for "equity". Could it be made to read "in fairness entitled"?

The Chairman: You still get back to the question of what is the legal basis which would enable the federal authority to enact a provision of this kind. The Joint Committee, of which you were a joint chairman, senator, had an opinion from Mr. Driedger, who was then the deputy minister. I note that at page 59 of the Report of the Special Joint Committee part of Mr. Driedger's report reads as follows:

The division of property between divorced persons (apart from the question of support or maintenance), as well as such matters as marriage settlements, dower, homestead rights, the right of married women to own property and sue in their own names, etc., may well stand on a different footing.

He had first of all dealt with maintenance and custody, and indicated how they tied into the right to legislate in relation to divorce, and how you can justify a tie-in of maintenance and custody, but he said that this other subject may well stand on a different footing. He goes on:

These matters do involve rights and obligations between husband and wife, but they seem to me to relate more to the property and civil rights of the parties to the marriage than to their legal status as married persons. They could vary from time to time and from jurisdiction to jurisdiction and a particular rule is not necessary or essential to constitute a marriage.

And then he goes on to say that the provinces of course, have jurisdiction over property and civil rights.

These are problems as to what legal basis there is that would make any such provision as contained in this proposed amendment valid and constitutional. Have you any answer to that, Mr. Maxwell?

Mr. Maxwell: I would say, senator, that by far the better view, in my mind, is that laws

of this kind fall within the provincial jurisdiction as to property and civil rights.

Senator Fergusson: Then why cannot we have a referral to the Supreme Court to decide who has the right to make this decision?

The Chairman: That can be done quite apart from this bill if there is an issue of that kind, and the Government seems at some time or another to be desirous of making reference on an infinite variety of subjects.

Senator Fergusson: I think it would be nice if we had a judgment of the court. I do not want to hold up the bill, but before we pass a bill such as this I think we should know our ground.

The Chairman: The whole question is whether it falls in property and civil rights. I would venture the statement that I think the majority opinion of constitutional lawyers—although I do not claim to be one—would be that this is property and civil rights in the provinces.

Senator Burchill: Is there a provision of this nature in the English divorce law or any other divorce law that you know of?

Mr. Maxwell: I believe their provision goes further than ours, but it must be remembered that in England one is dealing with a unitary state which does not have our constitutional law problems.

The Chairman: There is only one government there; there is no such thing as a provincial government.

Senator Thorvaldson: I feel we are dealing with a very difficult and technical problem and I would be very much opposed to having a section such as this, particularly where the constitutional ground is not sure. I am quite sure in my own mind that it is a matter of property and civil rights, that the province has jurisdiction and Parliament does not. It seems to me that if Parliament has jurisdiction to legislate in this manner it would be most unusual.

Senator Lang: Is the power conferred under paragraphs (a) and (b) within section 91 of the B.N.A. Act?

Mr. Maxwell: We are of that view, yes.

Senator Thorvaldson: I have my doubts about that, but no doubt Mr. Maxwell is right.

Mr. Maxwell: I have no doubt that many people would have doubts about it, but that is our opinion. We think we can do that but we do not think we can do the other.

Senator Thorvaldson: I think that what is in there will probably be subject to an appeal to the court some day which will be a very salutary thing. I think it is perhaps necessary in order to get a firm understanding of where we stand constitutionally on this question of alimony.

The Chairman: I notice in part of the opinion given to the Joint Committee by Mr. Driedger in connection with difficulties of maintenance and custody, which are the items you now raise, Senator Roebuck, as to whether they would stand up in court, he said:

It is the husband's duty to maintain the wife. If the marriage is dissolved, that obligation normally ceases because the relationship of husband and wife no longer exists. For the reasons I have indicated, I think that Parliament is competent to define the extent to which a dissolution of marriage alters the rights and obligations inherent in the marriage and therefore could provide for a continuation of the obligation to support.

Then he refers to the remarks of Lord Atkin in *Hyman v H.* (1929) Appeal Cases page 601, which supports that line of argument. Then he refers to this case where this same line of reasoning is supported and he continues:

The same reasoning would apply to maintenance and custody of children. During marriage the husband is under a duty to maintain and provide for the education of the children of the marriage, and the husband and wife have joint custody. These are rights and obligations that arise out of the marriage relationship. A divorce, which terminates the marriage relationship, obviously interferes with these rights and obligations, and in my opinion Parliament's jurisdiction in relation to divorce would include jurisdiction to prescribe the extent to which these rights and obligations are to be abrogated or continued.

This, then, seems to be an acceptable line of reasoning.

Senator Leonard: Mr. Chairman, that reasoning does not apply to paragraph (b) of the section which deals with an order requiring

the wife to pay this money for the maintenance of the husband.

The Chairman: No, this is breaking new ground. There is no doubt about it. I do not think in giving this opinion that that was being considered, although there may be some question. The husband may have the right to maintenance and support, but do you mean the other party to the marriage has no obligations in that regard? I am not ready to answer that one.

Senator Lang: Mr. Chairman, may I ask the departmental officials again what they think the effect would be if the qualifying words "for the maintenance..." et cetera in both (a) and (b) that were removed so that there were no qualifications on the order.

Senator Leonard: That way you are having the worst of both possible worlds. You should at least get maintenance, and that would be difficult.

Mr. Maxwell: It must be remembered, of course, that Parliament has two heads of jurisdiction, if I can put it that way here. It has not only divorce but also marriage. Now it may not be stretching one's imagination too far to say that the power to legislate in relation to marriage as distinguished from divorce carries with it the right to define rights and obligations between the parties. Taking that one step further, where one of the parties is in need of maintenance because he or she is ill or unable to look after himself or herself, that kind of obligation can probably be imposed by some legislature somewhere, and very arguably it could be imposed by the Parliament of Canada as the Constitution is now written.

The Chairman: It might have to be done under the criminal law.

Mr. Maxwell: Well, that is another possibility too. That is another head we have to rely on. But when you come to, in effect, the conferring of a right of property in a spouse, then I think we are getting beyond the marriage head as such and into what one could describe fairly as property law. I mean, after all, no one has ever doubted that the legislation that makes a married woman separate as to property is a proper provincial law, I think that this is where we have a problem. Is this sort of law a property law or is it a marriage and divorce law?

Senator Fergusson: Mr. Chairman, may I repeat what I said in the Senate. There are authorities on constitutional law who believe that this matter comes definitely under Marriage and Divorce in section 91, and these are not just people who have studied it as an interesting subject. These are people who have practised in this field and I have discussed the field with them. There are people who teach this law in our colleges and universities and who have agreed with this point. In fact, they have given me the idea in some cases.

I would also like to point out to you that Kent Power, who has written the book *Power on Divorce* to which we refer in many cases, has said that if there is a question of jurisdiction between the federal and the provincial government, then it is the federal Government—

The Chairman: Wait a minute. You mean by that that let us say there is property that has been built up or acquired and built up as a result of the efforts of the husband and the wife.

Senator Fergusson: Yes.

The Chairman: The title may be in the wife or in the husband. If it were in both of them, then we would not have the problem. But if it is in the husband or in the wife and there has been that build-up by both of them, then we have the problem. The whole question then is whether that is part of the marriage agreement between the parties or is a matter of contractual rights.

Senator Fergusson: There are very few marriage agreements in any provinces I know, except Quebec.

The Chairman: In a marriage it may be concluded from all the circumstances that in making her contribution to the build-up of whatever is necessary to acquire the property that the wife was staking out a claim for herself, and a court of law might find an interest by reason of that, but that is property.

Senator Fergusson: Especially a court of law presided over by a man, Mr. Chairman.

The Chairman: Well, does that make a difference?

Senator Fergusson: That may not be appropriate but it is my feeling. But there is one point you have brought up yourself when you said that in section 11 (1) (d) we are breaking

new ground. If we can break new ground there and stand a chance of being attacked in the courts, why can't we break new ground in the section that I am referring to?

The Chairman: Well, I think you will agree that we do break new ground. We have not yet discussed whether we think it is constitutionally sound or not. This is the question I was going to ask Mr. Maxwell.

Mr. Maxwell: I have already, I hope, Senator Fergusson, indicated my view on this matter, namely that even if there is any question of federal jurisdiction in this matter under the heading of divorce there is, in my submission, no question about it under the heading of marriage, in respect of which the Parliament of Canada also enjoys exclusive jurisdiction. We should not forget that fact when considering the bill. But it is really a matter of how far one can go. The whole bill breaks new ground as a matter of law. We think we can go this far. That is, we think we can go as far as we have gone in paragraph (b), but when you go beyond that and start talking about the rights of the respective spouses to the property of the other, well, then, perhaps I can add this, that, if Parliament has jurisdiction in this field, perhaps Parliament is the forum that will have to change the laws of community and property in the Province of Quebec. I would think this would be a very startling proposal from anybody from the constitutional point of view.

The Chairman: Are you ready for the question?

Senator Roebuck: I don't think it is as open and shut as all that because it sounds at the moment as if Mr. Maxwell's argument could not be wrong. I think it is a very great question still as to where constitutional rights lie. When the court separates the parties I think it is desirable that they separate the property at the same time.

Senator Aseltine: Divide all the property up?

Senator Roebuck: According to the rights of the parties. Take, for example, the case of a wife who has provided money to buy property. The fact that she has contributed to the purchase of the property is recognized. If on the other hand, to use my phrase while she was making the home the husband was making the money, well, then, the two of them accumulated an estate and each one of them has rights there. Each one has rights in equity.

The Chairman: But, Senator, you will agree that even before any petition for divorce was launched if a wife wanted a declaration of her rights in property and adduced the evidence to support it, a provincial court might make that declaration. There is authority now for doing that and this bill does not take that authority away.

Senator Roebuck: No, but it does leave her with an action on her hands when she gets a divorce. Naturally she doesn't want the property divided while they are happily married, but then when a divorce comes it is another matter.

The Chairman: Maybe the time to do it is when they are getting along very happily.

Senator Lang: Surely what we are talking about is a procedural matter. We are concerned that the court should be seized of the jurisdiction at the proper time. The question is whether the court would be seized with that jurisdiction at the time. But why can we not avoid a constitutional problem by sticking to the words in Senator Roebuck's amendment, that is:

That section 11 (1) be amended by adding at the end thereof after subparagraph (c) the following subparagraph:

(d) an order providing for the division of the marital property of the parties between the petitioner and the respondent as each is in equity entitled.

The Chairman: If I understand you, is what you are saying, if a petition for divorce is launched, and—for instance, let us take two situations under this—in that petition there is also a claim, on the basis of right and having made a contribution to property, for a declaration of an interest in that property, this is the way in which the matter would proceed, on the basis of the amendment which Senator Roebuck has proposed? If you had a situation where a petition for divorce went along claiming all the usual grounds, and there was an action started at the same time in a provincial court for a declaration of the rights of the wife in certain property, or in all the property, I would assume those actions might very well be tried at the same time. But you have made the marked distinction as to the source of the authority. The authority in the second instance, where you start a separate action, is under the jurisdiction of provincial law, but it might be, say, on an order of a judge that they could be tried at the same time.

Senator Roebuck: They could be consolidated, and this is what would happen if two actions were started.

Senator Thorvaldson: I just want to remark that if you accept this proposed amendment by Senator Roebuck, then it would be necessary also to amend subsection 2, because it says:

An order made pursuant to this section may be varied from time to time or rescinded by the court that made the order if it thinks it fit . . .

et cetera. How are you going to rescind an order after it has divided capital assets?

The Chairman: That does not present a problem, because subsection 2 could be amended so as to exclude from the jurisdiction of subsection 2 this subparagraph (d) which Senator Roebuck has proposed. That is not too difficult.

Senator Thorvaldson: I just want to say that certainly the other place only intended to go so far, to deal with income, namely by way of maintenance, and so on; and if we open up this question of division of capital assets this bill may never pass. I think it is a very dangerous amendment to put in there, and I would be very reluctant to tempt the constitutional fates by going further. It seems to me this goes way beyond the opinion given already by the law officers.

The Chairman: Senator, is your amendment in the form in which you want us to consider it?

Senator Roebuck: No. I am going to accept Senator Lang's suggestion and change "in equity" to the words "by law". It may be the law is within the jurisdiction of provincial legislatures or in ours—I do not care which in that case. So it would read:

. . . between the petitioner and the respondent as each is by law entitled.

The Chairman: There might be some room for discussion if you contemplated a judgment of the court in relation to the entitlement by law. But to have in this order or declaration granting divorce the order for maintenance and custody and division of property, I think we are really getting ourselves into trouble and may endanger the bill, or certainly delay it. And this is a worthwhile measure, as you yourself know. You have been fighting long enough to get it this far.

Senator Roebuck: It is a good measure, and I have been trying to improve the measure, but not very successfully.

Senator Aseltine: You do not want to endanger it.

Senator Roebuck: But I want it perfectly clear that while I am trying to improve it, I have a great respect for this measure, and I have said over and over again it is a good bill.

Senator Leonard: Would Mr. Maxwell and Mr. Thorvaldson feel the same with respect to some general phraseology such as, "such further order with respect to the property of the husband, or of the wife, as the court may deem fit and just"? Is there the same objection?

Mr. Maxwell: Essentially the same objection, senator. I think that language would be virtually meaningless.

Senator Leonard: Except that that might even be made to be the result of an arrangement, whereas, as it is now, you confine the parties to maintenance only.

Mr. Maxwell: Well, if you go further then I think the bill might well become vulnerable—indeed, I think it would be vulnerable to constitutional attack, and goodness only knows what the result of that might be. You might lose the whole section.

Senator Cook: Would the judge not have to take all of the facts into consideration when he made his order for maintenance? I do not see the need for this amendment.

The Chairman: Are you ready for the question?

Senator Lang: I would like to know what objection the departmental officials have to Senator Roebuck's amendment, as amended by my suggestion.

The Chairman: Then, amend it according to your suggestion.

Senator Lang: Would it jeopardize the bill on constitutional grounds?

Mr. Maxwell: Yes, I think it would. I do not think it would be any improvement. It would probably be a meaningless statement of law. As I understand what you are saying it is, in effect, that the court can do what the law says it can do.

Senator Roebuck: But are we not giving it jurisdiction?

The Chairman: You do not need to give the Ontario courts jurisdiction over property.

Senator Roebuck: But, in a divorce action...

The Chairman: The federal authority has no jurisdiction over that phase of it, unless you can tie it in with divorce. I do not see how the financial interest that a husband and wife have in a property is inherent in a marriage relationship.

Senator Lang: All we are doing is trying to avoid a multiplicity of actions here. All we are saying that in granting a decree of divorce the judge may make an order.

The Chairman: But you are dealing with substantive law as a matter of procedure.

Senator Lang: It would do away with a multiplicity of actions arising out of the same issue.

The Chairman: But that is already a matter of law, and you are putting—

Senator Lang: I submit it is not a matter of law because—

The Chairman: If it is not a matter of substantive law when you are determining the relationship between husband and wife in relation to property, then I do not know what substantive law is.

Senator Lang: But it is something that has to be considered in the granting of a divorce decree. I do not think it would be prejudicial to the constitutionality of this measure.

The Chairman: We are running around in a circle. There is a motion before us, and the best way to decide this matter is to vote on the motion, because we are never going to be *ad idem* on it.

Senator Leonard: Are the departmental officials definite in their view that this is not worth standing the section for further consideration, in the light of our own difference of opinion on the matter? We still have—

The Chairman: These gentlemen have been the advisers to the minister.

Senator Leonard: We have already stood one section, so we shall have to come back to that. If they are definitely of this opinion, then that ends the matter and I shall have to

accept their view, but it seems to me that there has been a rather strong argument that this point might be covered.

Mr. Maxwell: Perhaps I could say this, that this matter has been examined by ourselves very, very carefully in the course of preparing this bill. I must confess that I would be surprised if, for example, the Minister of Justice, were he here, would give an inch on this matter. Although I cannot speak fully for him on the point, I cannot imagine his agreeing to this. I think it is a most startling proposition that Parliament would have jurisdiction to change the principles of the Civil Code, for example, that deal with community of property. As a matter of fact, I cannot imagine any reputable constitutional expert concluding that.

Senator Lang: I am not suggesting that—

Senator Leonard: It is really a point of enforcing the Civil Code, if you will, in the procedures taken under this act. I think that that is really Senator Lang's point.

The Chairman: The question is whether they could adjudicate on those rights. Surely, there is some adjudication necessary in order to determine the interests of the wife in the property.

Are you ready for the question? I take it that the committee understands the amendment proposed by Senator Roebuck?

Senator Lang: We did not have an answer to Senator Leonard's question which was directed to the departmental officers.

The Chairman: I think Mr. Maxwell answered you.

Senator Leonard: He did not give me much hope.

Senator Lang: It was not very categorical.

The Chairman: Not all of us can be categorical.

Senator Lang: I think it is a very important point. I think we should examine any possible way of avoiding inherent injustice in these situations.

Senator Thorvaldson: I submit that Mr. Maxwell gave a very clear and interesting answer.

The Chairman: The answer, whatever it was, stands, and if it is the best answer Mr. Maxwell can give we have to get along with it.

Senator Fergusson: It seems to me that after all the argument we have heard it would not be asking too much to have the department look it over again.

Mr. Maxwell: We have looked at this, Senator Fergusson, until we think there is no point in looking at it any more.

Senator Fergusson: I do not see that. I should think you might.

Senator Leonard: We have not added anything to the points you have considered, Mr. Maxwell?

Senator Fergusson: Have no points been brought up that you have not definitely considered yourself?

Mr. Maxwell: I am not aware of any.

The Chairman: Are you ready for the question?

Senator Fergusson: It seems to indicate a closed mind if you would not even take it back and consider it.

The Chairman: A closed mind can work both ways depending on your point of view.

Senator Fergusson: Touché.

The Chairman: Are you ready for the question on the amendment? Those who support Senator Roebuck's amendment please raise their hands... To the contrary?

The amendment is lost, five for and seven against.

Shall subsections (1) and (2) of section 11 carry?

Hon. Senators: Carried.

The Chairman: Shall section 12 carry?

Hon. Senators: Carried.

The Chairman: Now section 13, dealing with decrees and orders. Shall section 13 subsection (1) carry?

Hon. Senators: Carried.

The Chairman: Shall subsection (2) carry?

Hon. Senators: Carried.

The Chairman: Shall subsection (3) carry?

Senator Aseltine: That is usual.

Hon. Senators: Carried.

The Chairman: Shall subsection (4) carry?

Hon. Senators: Carried.

The Chairman: We now come to section 14. Shall section 14 carry?

Hon. Senators: Carried.

The Chairman: Section 15?

Hon. Senators: Carried.

The Chairman: Shall section 16, dealing with decree absolute, carry?

Senator Thorvaldson: Is section 16 really necessary?

Where a decree of divorce has been made absolute under this act, either party to the former marriage may marry again.

The Chairman: This may be making assurance doubly sure. I do not know.

Mr. Maxwell: *Ex abundanti cautela* at least.

The Chairman: Translated into English that means making assurance doubly sure.

Senator Roebuck: I think it is quite necessary. You see, you have judicial separation which is also divorce, in which the right to remarry is not granted. It would be very wise to leave that section.

The Chairman: Shall the section carry?

Hon. Senators: Carried.

The Chairman: Section 17 deals with appeals. Shall subsection (1) carry?

Hon. Senators: Carried.

The Chairman: Subsection (2)?

Hon. Senators: Carried.

The Chairman: Subsection (3)?

Hon. Senators: Carried.

The Chairman: Subsection (4)?

Hon. Senators: Carried.

The Chairman: Section 18 deals with appeal to the Supreme Court of Canada. Shall subsection (1) of section 18 carry?

Hon. Senators: Carried.

The Chairman: Subsection (2)?

Hon. Senators: Carried.

The Chairman: Now, under section 19, providing for rules of the court, are there any questions on this?

Senator Roebuck: I presume that this is much the same as you will find in other acts, Mr. Maxwell, where you allow rules of the court to be made by the judges or others.

Mr. Maxwell: That is a frequent practice.

Senator Roebuck: A frequent practice, yes.

Senator Leonard: Mr. Chairman, we may run into some difficulty if the amendment is made adding county courts to the courts here.

The Chairman: We will have to come back and look at the other sections then.

Senator Leonard: We will have to come back and look at them, yes.

Senator Roebuck: I made that point when I suggested the amendment.

The Chairman: Oh, yes. That is right.

Senator Roebuck: It might be required that we look at some of these other sections which I did not have time to look at.

The Chairman: Section 19 carries, then?

Hon. Senators: Carried.

The Chairman: Section 20 deals with evidence. Subsections (1) and (2). Shall they carry?

Hon. Senators: Carried.

Senator Roebuck: Now we change the rules a bit. So far in trials here, which will now be taken over by the Exchequer Court, the rules of evidence of the province in which the proceedings are carried on are the rules.

The Chairman: Yes.

Senator Roebuck: And in this instance I think this changes that considerably, if I remember rightly. So that we here have been using the rules of evidence for the Province of Ontario, although the parties came from the Province of Quebec.

The Chairman: Under this section it will be the rules of evidence of the province from which the application for divorce comes to the court. In one case it would be the law of Newfoundland. In the other case it would be the law of Quebec.

Senator Roebuck: Which means that the Exchequer Court must know the rules of all these provinces, which is some little chore.

Mr. Maxwell: They do already, Senator. If they do not, counsel can acquaint them.

Senator Roebuck: They do, do they?

The Chairman: Is that carried?

Senator Roebuck: Yes, I have no objection to it.

Hon. Senators: Carried.

The Chairman: Shall section 21 carry?

Hon. Senators: Carried.

The Chairman: Shall section 22 carry? It deals with Quebec and Newfoundland courts and the matter of the proclamation by which the jurisdiction will be exercised by the Superior Court in either one of these provinces and will cease to be exercised by the Exchequer Court. That is correct, is it not?

Mr. Maxwell: Yes.

The Chairman: Shall section 22 carry?

Senator Roebuck: That may be something we have to change, if we go into county courts.

The Chairman: No. If we were to change the definition of court as Senator Flynn suggested, then we would have to come back and look at this.

Senator Roebuck: Perhaps it is ready to be looked at, because this refers to "court" and we find "court" in section 2.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: There are subsections (1), (2), (3) and (4). Are these all carried?

Hon. Senators: Carried.

The Chairman: Then there are the consequential amendments you find in section 23. Would you like to have an explanation of this from Mr. Maxwell or is it clear?

Senator Haig: It is clear.

Senator Roebuck: Well, an explanation would be all right, but I think it is perfectly good legislation.

The Chairman: I think it is clear.

Hon. Senators: Carried.

The Chairman: That takes us through to part of page 13, all of page 14, and that section carries?

Hon. Senators: Carried.

The Chairman: Then we come to section 24, respecting the title. Shall this carry?

Hon. Senators: Carried.

The Chairman: Then the transitional and repeal section follows. Is that carried?

Hon. Senators: Carried.

Senator Roebuck: I have something to say about section 26.

The Chairman: Just one second, Senator. I understand that there is an amendment proposed for section 26.

Senator Roebuck: Yes. I was written to by the department with regard to this. They sent me an amendment, and I want to move it because you have voted down every other amendment, but you cannot vote down this one.

The Chairman: Certainly, Senator, I would not think of moving it myself with you here.

Senator Roebuck: Oh, yes, I must move this. This is a big thrill.

The Chairman: And I will support it.

Senator Roebuck: Right. So will everybody else.

The Chairman: Maybe Senator Fergusson will second it.

Senator Fergusson: I would be delighted to.

The Chairman: They have achieved some measure of success.

Senator Roebuck: May I state very shortly what it is? Section 26 repeals the Divorce Act, Ontario, which was passed in 1930 and which conferred upon the Supreme Court of Ontario jurisdiction in both the dissolution of marriages and the annulment of marriages. Now in this bill we are repealing the act and it has the effect of granting to the Supreme Court of Ontario jurisdiction to dissolve a marriage, but by a slip of the draftsmen the annulment of marriages was overlooked. Therefore this amendment is for the purpose of correcting that mere slip of the pen.

The Chairman: Perhaps we should ask the Law Clerk of the Senate if he has seen this.

The Law Clerk: I have seen it.

The Chairman: Are you satisfied with the form in which we are proposing to amend this by striking out a line and inserting something in its place?

The Law Clerk: Well, we can consider the exact form, but the words seem to be right and the intention is correct.

Senator Roebuck: I also understand that the amendment has been approved by the minister.

The Chairman: Well, will you move the amendment so that we can make it unanimous?

Senator Roebuck: I have it here in French as well in English. Therefore I move that the English version of Bill C-187, an act respecting divorce, be amended by striking out line 2 on page 16 and substituting the following:

Act, the Divorce Jurisdiction Act, the Divorce Act (Ontario) in so far as it relates to the dissolution of marriage,

The Chairman: Then the section continues?

Senator Roebuck: Yes.

The Chairman: You have heard the amendment proposed by Senator Roebuck and seconded by Senator Fergusson. Those in favour? Those against, if any?

Hon. Senators: Carried.

The Chairman: Now we have to do the same thing with the French version.

Senator Methot: Que la version française du Bill C-187 soit modifié par la suppression de la ligne 10 à la page 17 et la substitution de la ligne suivante:

la Loi sur le divorce (Ontario) dans la mesure où elle a trait à la dissolution du mariage, et la Loi sur les appels de...

The Chairman: This is the French equivalent of the motion. Shall we approve of this as the French version?

Hon. Senators: Carried.

The Chairman: Subsection (2), I take it, carries as is. Then section 27 deals with the commencement date. Does that carry?

Senator Thorvaldson: Why are three months required?

The Chairman: The idea, as I understand it, is to allow for time to hold a meeting of the judges of the various jurisdictions to formulate rules and then from the federal aspect to allow time to achieve a uniformity of the rules in all provinces. This might take a little time.

Senator Roebuck: Senator Grosart asked that we reduce the time and I stated in the

Senate that it was not too long and if people had waited 100 years for this bill...

The Chairman: Different people—not the same people.

Senator Roebuck: You are quite right, but I said that if we have waited 100 years we could wait a little longer and I had some very severe letters written by people who are impatiently awaiting the enactment of this bill.

The Chairman: Shall section 27 carry?

Hon. Senators: Carried.

The Chairman: We have stood subsection (e) of section 2 to hear the minister. Otherwise we have dealt with all the sections of the bill. Shall the committee stand adjourned until 9.30 tomorrow morning in the hope that the minister will be available?

Senator Roebuck: Is he likely to be available?

The Chairman: I don't know, but we will certainly find out.

The committee adjourned.

Ottawa, Thursday, February 1, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-187, respecting Divorce, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden, (Chairman) in the Chair.

The Chairman: I call the meeting to order. We have with us this morning the honourable Pierre Elliott Trudeau, Minister of Justice. We had adjourned further consideration of the particular item in the bill, section 2 (e) for his viewpoint in connection with the proposed amendments which would change the purport and substance of the definition of "court" as it stands in the bill at the present time.

I think, Mr. Minister, you are familiar with the proposed amendments. Senator Flynn raised a point, proposing an amendment which, subject to Senator Flynn's correction, I will attempt to paraphrase. He suggested that this legislation should designate the province and confer the authority on the pro-

vincial authority and the provincial authority would in turn designate the court. Is that a fair statement, Senator Flynn?

Senator Flynn: Or alternatively that the court should be designated by the Governor in Council on the recommendation of the Lieutenant-Governor in Council. And I make that suggestion in order to meet the objection raised by Mr. Maxwell. Although I am not convinced, I am prepared to go along with him in order to achieve the same purpose.

The Chairman: All right.

Senator Leonard: Mr. Chairman, to make it clear, it was not the intention, I understand, that the Governor in Council would have to accept the designation.

Senator Flynn: No.

The Chairman: But he may.

Senator Leonard: Yes, he could accept the designation.

The Chairman: Then Senator Roebuck proposed an amendment to add county courts—or district courts, if that were the title in the particular province—to the courts on which jurisdiction was being conferred by this bill. That is the subject matter.

Senator Roebuck: I pointed out the advantage of having a local court from the point of view of accessibility. I also pointed out that the designation of the court is within the jurisdiction of Parliament and not within the jurisdiction of the provinces, and that we ought to accept our responsibility and make the designation.

The motion that I made was to add “and county court” after the set of statements of superior or supreme court or whatever it is in 2 (e). I also mentioned that my motion was as much a statement of intention as any technical change of the act, because there might be, and probably are, some sections in the course of the act which will have to be amended, probably slightly, accordingly.

But my thought was directed to the advantage to be had from the ready access of the county courts, or whatever they may be called—the junior local courts in the province—acting concurrently with the supreme court in the report in the committee. That advantage was pointed out. It was also said that either of the parties might move the case into the supreme court if he thought it was desirable to have a supreme court trial.

The Honourable J. C. McRuer pointed out in his address to the committee that it would be desirable not to sidetrack the supreme court entirely, but, if anybody wanted a trial in the supreme court, he could move the case into the supreme court, although it was tried in the county court. And then after the decision with regard to divorce had been made, there were other things that would be considered such as maintenance, access, custody and so on, which are continuing things and which the local judge can handle much better than the itinerant judge. And further it was provided that even though the trial of the divorce itself was in the supreme court, subsequent questions relating to alimony and the rest of these ancillary matters should be open to be decided and dealt with by the local court.

The Chairman: The other point, and I think you have a record of it, Mr. Minister, was the point raised by Senator Macdonald on making use of the courts of divorce as they are set up in the Province of Nova Scotia. Would you care to address yourself to these matters?

The Honourable Pierre Elliott Trudeau, Minister of Justice and Attorney General of Canada: I shall, and I shall attempt to do it briefly. I understand that some of these points were dealt with yesterday by my deputy minister and I am sure he did it more ably than I could. I am tempted to say that there is a direct contradiction between at least two of these amendments. Senator Flynn's suggestion is that in reality we should shift to the provinces the primary responsibility of designating the courts. Senator Roebuck, on the other hand, says it is up to Parliament to act in accordance with its responsibility and designate the courts. Therefore I would suggest that perhaps it might serve our purpose if we could send these gentlemen back to back and then whoever survives could have his amendment considered.

Senator Roebuck: I wouldn't have a chance.

The Chairman: They say that Senator Roebuck is quite an infighter.

Hon. Mr. Trudeau: Must we then assume that they will both survive? Well, then, let us take Senator Roebuck's point first. The spirit in which we approached this law was to seek as great a measure of uniformity on divorce practice across the country as possible. I felt we could best do this by restricting the jurisdiction to the superior courts of the prov-

inces, that is to say, to the trial division of whatever the superior court happens to be called in a particular province. If the jurisdiction were to be in the county courts, we felt that there might be a greater danger of varying interpretations of the law, and we found this to be an important consideration especially since we were rewriting the substantive law of divorce in a very radical way.

Amongst other things I was influenced by the Archbishop of Canterbury's report on the problem of divorce. This is a report which was frequently evoked in the House of Commons and it was one on which the partisans of a breakdown leaned very heavily. The gravity of the problem of divorce was stressed in a paragraph which I should like to read to you from the bottom of page 77. This report was drawn up by a group appointed by the Archbishop of Canterbury in 1964 and is to be found in this little book entitled *Putting Asunder—A Divorce Law for Contemporary Society*:

We find ourselves in agreement, as did the Morton Commission and the Denning Committee, with the words of the Gorell Commission of 1912: ...the gravity of divorce and other matrimonial cases, affecting as they do the family life, the status of the parties, the interests of their children, and the interest of the State in the moral and social well-being of its citizens, makes it desirable to provide, if possible, that, even for the poorest persons, these cases should be determined by the superior courts of the country assisted by the attendance of the Bar, which we regard as of high importance in divorce and matrimonial cases, both in the interests of the parties and in the public interest.

These reasons apply very much to Canada. They apply perhaps even more when you consider the fact that we have a federal form of government here with different subject matters touching on life and the status of the parties, some being within the federal jurisdiction and some being within provincial jurisdiction. Because of the danger of discrepancies in the interpretation of this federal statute, we felt it to be important to proceed in front of the high or superior courts of the provinces.

The main objection I found to that course was one of cost. At least that was the one raised most frequently in the House of Com-

mons. But this objection, I think, can be met in theory. I don't know what the cost will be. It is not true to say that automatically the costs in a supreme or superior court must be higher than those of the county courts. This would be a matter for the Rules of Practice to set out. I am very hopeful that there will be a real effort made to keep the costs lower. But when you are thinking of costs, there is an argument against the county court designation, and it comes from the possibility, if we were to designate a county court, of the parties choosing a county court which would be far distant or even the most distant one from the residence of one of the parties. We could not possibly write domicile laws to apply within counties, at least not in any way that I can see. There might be a consequence of having one of the parties shopping around to find a convenient county court judge either because of his outlook on divorce or because of the cost involved.

I think, if Senator Roebuck's suggestion was well understood by me, he would probably meet this objection by saying that in such cases one of the parties could evoke the case into the Supreme Court, but if he envisages this procedure happening frequently, then I cannot quite see what advantage will be gained. We would be back to the superior courts. If the contrary were to happen with frequency and if the people of any given province found it more convenient and if the legislature in its wisdom found that the case law in the application of divorce statutes was fairly well set, it could at any time of course designate or ask us to designate the county court judges as local judges of the Supreme Court. It is not a question of our not being prepared to accept our responsibilities. We are prepared to take our responsibilities and to say that for matters of theory and matters of good law jurisdiction should be in the superior courts, and, if any local judge is designated, it will be more convenient for the parties perhaps if he is designated as a local judge of the Supreme or Superior Court. In other words we are not judging the level of judges. In theory we think all judges are able and competent. We are judging the level of the court, and I think that by proceeding in the way we do, we have shown that amount of firmness which indicates the gravity with which we want to deal with divorce matters, and we have permitted or we would permit such flexibility as is needed to permit different provinces to meet this problem in the way they best see fit.

Now I think that another argument could be used. It is a bit abstract, but it could happen with some frequency, I think. If we were to give jurisdiction to county courts and the matter of the division of property arose, it would not be dealt with under divorce law but would be dealt with under the laws of the provinces concerning the division and partition of property. If you take the example of the Partition Act of Ontario, it is indicated in the act itself that where property or properties are not within one county, the judge will have to be a judge of the superior court of that province. And, therefore, if we had jurisdiction in the county courts, rather than simplifying the concurrent or subsequent actions, to which Senator Roebuck referred, we would be complicating them, because you could not take the partition action and divorce action in front of the same court. In that hypothesis, the parties would have to go before a county court for their divorce, and then the action for the partition of property between the parties being divorced would have to be taken in a superior court. That is another argument for attempting to have province-wide courts dealing with the matter of divorce.

I think that would sum up most of my arguments, Mr. Chairman. I do not think they are absolutely compelling. I confess that we only departed from the recommendations, in this respect, of the Roebuck committee with fear and trembling, as the Bible says, but we did so on the basis that, this being a revolutionary or almost revolutionary approach to divorce for Canada, we felt we perhaps should gain by being a little bit conservative in the interpretation of this revolutionary law. That is perhaps the kind of compromise we made in our own minds. We felt the law would be not only better served, but probably better understood and better accepted, if we gave the subject matter to the supreme courts of the provinces.

I should add also, just by way of reference, that at least one province and the territories do not have county courts and, therefore, this problem does not arise for them. Also we have heard from other provinces that they really prefer our choice of superior courts rather than county courts.

For all these reasons, we made the choice we did. Once again, I do not pretend it is a choice which could not have been better, but it was made as best we knew, and we feel we should stand with it.

Dealing with Senator Flynn's objection, I understood from his interjection that the constitutional aspect has been disposed of; that you proposed to grant, for the sake of argument, that there was no constitutional difficulty?

Senator Flynn: Well, the amendment I had moved was to define "court" as the one given jurisdiction by the law of a province. But Mr. Maxwell said that would be delegating power to the province, which is something which could not be done. With all due respect, I am prepared to go along with him. In suggesting that the court would be designated by a proclamation of the Governor in Council, on the recommendation of the Lieutenant Governor in Council, if I may put it in practical terms, for instance, Nova Scotia presently has a divorce court. If the Lieutenant Governor of Nova Scotia would recommend that this court be continued as the divorce court, then, if the Governor in Council is in agreement, he would issue a proclamation saying that, "The divorce court of Nova Scotia is the court for the purposes of this act in the Province of Nova Scotia."

For instance, if in any other province the legislature would create a family court and the Lieutenant Governor in Council would recommend that such family court be the court of divorce for that province, if the Governor in Council were in agreement he would issue a proclamation saying, "This family court"—for instance, in Quebec or in British Columbia—"shall be the court for the purposes of this act."

Hon. Mr. Trudeau: Well, if he is not in agreement, senator, there would be freedom for the Governor in Council not to do so?

Senator Flynn: Yes, it would be the Divorce Division of the Exchequer Court, then, which would have jurisdiction.

The Chairman: No, senator. I do not think you mean that, do you?

Senator Flynn: Yes.

Hon. Mr. Trudeau: You are thinking of Quebec in this case?

Senator Flynn: Of Quebec, of Nova Scotia and of other provinces. Let us say, for instance, "court," as you have it on page 2 is interpreted this way. I would say:

"court" for any province means, . . .

(A) where no proclamation has been issued under subsection (1) of section 22, the Divorce Division of the Exchequer Court, or

(B) where a proclamation has been issued under subsection (1) of section 22, the court mentioned in such proclamation

Then, turning to section 22, we would delete from the text there any reference to the Province of Quebec or Newfoundland, and we would say:

The Governor in Council may, on the recommendation of the Lieutenant Governor in Council of any province, issue a proclamation

“may”—he is not bound to declaring the court so recommended by the Lieutenant Governor in Council to be the court for that province for the purposes of this act.

So, you would meet the varying circumstances all across Canada.

And may I suggest—and I think the minister will agree with me—that marriage and divorce have been classified as federal matters for only one reason, because they wanted uniformity and to prevent a religious majority from imposing its will in this respect. Otherwise it would fall properly in the field of property and civil rights; and we know that in all provinces, concerning divorce we have to apply the ancillary problems which are presently under provincial jurisdiction. So, it may be very well that in a province they would want a specialized court to deal not only with divorce but also with these related problems. That family court, well organized, would not be a lower court, but the equivalent of the superior court. I do not see why, in these circumstances, the Governor in Council would not agree that such court be the court of divorce for that province.

Hon. Mr. Trudeau: It seems to me that either the provinces would designate the superior, supreme, or equivalent court, and then there would be no disagreement, and no need to change our law, or they would choose some lower court, which might, under your hypothesis, be not only a county court but also a recorder's court or a magistrate's court, or anything else; and we would be disinclined, for the reasons I indicated to Senator Roebuck, to agree. It seems to me that would create pretty difficult political situations.

Senator Flynn: You would have the Divorce Division of the Exchequer Court in a case like that.

Hon. Mr. Trudeau: Yes, but we would be in the position of asking them to make the choice and then, in our superior wisdom, deciding they had chosen badly because they had not chosen as we presumed they would. I think this would be not only a form of abdication of our responsibility, but it might lead to very serious political difficulties in the area of federal-provincial relations.

Senator Flynn: With all due respect...

Hon. Mr. Trudeau: Let us take an example. A province designates the given level of court—let us say, a police court—which deals...

Senator Flynn: Well...

Hon. Mr. Trudeau: What example would you give, senator?

Senator Flynn: I have mentioned, for instance, the divorce court of Nova Scotia, or a family court which has on its staff specialists who are able to counsel the spouses in an endeavour to reconcile them, which is one of the objects of the act.

Hon. Mr. Trudeau: Well, would these family courts be superior courts under the Constitution, or would they not be superior courts?

Senator Flynn: What test would you apply to determine what is a superior court?

Hon. Mr. Trudeau: The test that the Supreme Court applies when it interprets the sections of the B.N.A. Act. It determines what is a superior court according to the terms of the B.N.A. Act.

Senator Flynn: But the B.N.A. Act, with all due respect, does not define what is a superior court.

Hon. Mr. Trudeau: No, but the Supreme Court has had to define what was to be held to be that, and I am assuming we would follow the same kind of test.

Senator Flynn: I do not see why a family court would be necessarily a low court. It could be a superior court.

Hon. Mr. Trudeau: If it is a superior court then there is no problem. It would fall under the terms of our act.

Senator Flynn: I doubt it very much, because it has to be the court as it is now. If you create a new court then this act will not provide the machinery for the recognition of such a court.

The Chairman: No, but it might be done by amendment.

Senator Flynn: Yes, but I mean . . .

The Chairman: You have got to face that in all legislation.

Senator Flynn: Well, you do in many acts provide for regulations. In other words, as far as the jurisdiction of the court is concerned in this act my suggestion is that we deal with this problem by way of regulation, or proclamation by the Governor in Council. That is my suggestion. It would be a much more . . .

The Chairman: "Flexible"—is that the word you are looking for?

Senator Flynn: Yes. It would be much more flexible than it is at present.

The Chairman: You have not touched on the point that the so-called judges—and I mean that respectfully—in some of these provincial courts have not been appointed by the federal authority.

Senator Flynn: That is the point. I thought that the minister would say that the court would be a court to which the judges are appointed by the federal Government, but he did not say that.

Hon. Mr. Trudeau: Well, that is the effect of the B.N.A. Act. The B.N.A. Act says that the federal Government can appoint superior court judges.

Senator Flynn: And county court judges as well.

Hon. Mr. Trudeau: Yes, superior and county court judges, but this does not answer your question as to what is a superior court or a county court. I cannot answer that question by saying it is a court to which the federal Government has appointed judges, because that is begging the question. We have to fall back on something other than that, such as the level of the subject matter that the court deals with, and so on. This is the test that the Supreme Court uses, and this is the test that we used in drafting this bill. We considered that the level of the subject matter was such that it had to go to a superior

court. If we accept the historical reasons which you gave, senator, and say that those reasons explain why this jurisdiction was given to Parliament, then I point out that if they are right they still stand. We would not want. . .

Senator Flynn: They still stand, I agree, but not as strongly as they stood 100 years ago, and for the obvious reason that Parliament has always been reluctant to legislate in this matter, and now it is less reluctant because there is a general consensus across the country about these matters that did not exist even ten years ago.

Hon. Mr. Trudeau: We do not know that, do we? We do not have reason to believe—perhaps you do—that the Province of Quebec is contemplating the transference of this jurisdiction to the superior courts rather than leaving it with the Exchequer Court.

Senator Flynn: I did not say that because I do not know, but I do know that for a long time the creation of family courts to deal with these problems has been considered.

Hon. Mr. Trudeau: I can only say, with respect, that this is a theoretical proposition—a hypothetical situation. I know the Bar of Quebec, and indeed, the Bars of other provinces have been campaigning for decades to have some kind of a family court set-up, but so far there has been more talk than action. It is a difficult thing to do. I do not mean that there has been—

The Chairman: Procrastination?

Hon. Mr. Trudeau: Thank you. I do not mean that there has been procrastination, but it is a very difficult problem to join all of these subject matters in the same court. But, if the province we are thinking of, senator—if Quebec were to do this, then I think they would be inclined to give this subject matter to a high court rather than a low court, because of the importance which the province attaches to family matters. If this were the case then, once again, there would be no conflict. The provincial Government and the federal Government would be agreed as to the level of jurisdiction at which this very important subject matter should be dealt.

Senator Flynn: May I suggest, for instance, that if the Legislature of Quebec were to create a family court as a superior court to which judges would be appointed by the federal Government, then that would not allow a

reference of these matters of divorce to such a court because that court would not be a superior court as is defined here.

Hon. Mr. Trudeau: I would be the trial—would it be the trial division of the Superior Court? I do not know. It certainly would not be an appellate division.

Senator Flynn: No, but it would not be a court as defined.

Hon. Mr. Trudeau: You are probably right, senator, we say “the superior court of the province”. The superior court of the province would be called, in your example, a family court, in the same way as it is called the Supreme Court in some provinces, and the High Court in other provinces. But in my example, I was making it really a matter of subject-matter, and not a matter of designation.

Senator Flynn: If the court were called the Superior Court of Quebec, or if it were called the Superior Court (Family Division) of the province, I am not too sure that the act relating to it would constitute it as a separate court if it could come under the description “the superior court of the province” here.

Hon. Mr. Trudeau: It would, senator, if in drafting their law—their administration of justice act—they spelled out “family matters” and said “family matters will be dealt with by the Superior court for such and such a purpose”. It depends upon their intent, of course. But, our law is a general one, and if a province did not want this family court to be presided over by judges of the superior court...

Senator Flynn: This is a theoretical question, as you mentioned, but let us come to an actual problem, namely, the problem in respect of Nova Scotia. If the Province of Nova Scotia suggests that its divorce court be continued as a court for the purposes of this act, then you say you have no objection to that?

Hon. Mr. Trudeau: I have objection to the use of the court, as it were, because the divorce court of Nova Scotia is composed half of county court judges and half of superior court judges. My understanding of the statistics leads me to believe that the half that is composed of country court judges deals with something like a third of the cases. Here, again, the spirit of the administration of justice in Nova Scotia is statistically closer to our proposal than to the alternative of the

county court. That does not prove much, but it certainly indicates that the tendency in Nova Scotia is towards the superior court or supreme court level.

Senator Flynn: But have you any objection to the divorce court of Nova Scotia?

Hon. Mr. Trudeau: Well, in so far as it is composed in part of county court judges I feel that if they want these county court judges, or judges at the county court judge level, to continue sitting on divorce matters, then they can very well have the local judges or the county court judges designated as local judges of the supreme court.

Senator Flynn: What difference would it make in practice?

Hon. Mr. Trudeau: Well, the difference I was explaining earlier to Senator Roebuck, that we would prefer to have divorce matters settled by higher courts.

Senator Flynn: Not better settled.

Hon. Mr. Trudeau: Perhaps not better settled in the sense that I do not claim that a judge of a county court is not as able, honest and learned as a judge of the Supreme Court, but better settled in the sense that we would have a higher court dealing with that subject-matter. There is no reason to believe that any aspect of the law is better settled by one level of court than by another, but I suggest that from the beginning of time in organized society the administration of justice has been based on the fiction that courts at one level deal with certain subject-matter and others with other subject-matter, and this is the fiction we are continuing.

Senator Flynn: But we have changed the jurisdiction over the years.

Senator Macdonald: The court of divorce and matrimonial causes in Nova Scotia has been in existence since, I believe, 1841, and so far as I know it has given satisfaction over the years. Is your only objection to that court that this new arrangement would make the hearing of divorce cases uniform across Canada?

Hon. Mr. Trudeau: Yes, our main purpose is to seek uniformity of the divorce laws and consistency in their application. We feel that that can be obtained by having the law interpreted at the Superior Court level. We could have decided once again not to exercise our

jurisdiction over marriage and divorce or we could have left the pre-Confederation arrangement, but I revert to my earlier argument that we decided to write a completely new law, one which brought in rather radical reforms. One of the reforms was to seek for uniformity and consistency. This is the way most of the laws of Canada have progressed. When Confederation began, the previous laws continued in application until Parliament over-rode them with laws which sought greater uniformity and greater consistency, and this is what we are doing here, with perhaps 100 years delay.

Senator Macdonald: So the only difference will be that if they ask the county court judge to hear divorce cases he will be hearing the cases as a Supreme Court judge rather than as a judge of the court of divorce and matrimonial causes?

Hon. Mr. Trudeau: That is right. This happens in other provinces. It happens in British Columbia, where they had the test case of *Attorney General of British Columbia v. Lloyd MacKenzie*. The Supreme Court decided that the province could constitutionally designate a county court judge as a local judge of the Supreme Court. When we write our letters patent, or when we designate such a judge, we designate him as a judge of, say, Vancouver County, and as a local judge of the Supreme Court of British Columbia. That is why I feel our arrangement is the most flexible. It chooses. We are affirming the level of the court to which we want to see this subject-matter go. Yet the act permits provinces in certain cases, if they feel the burden will be better discharged, to reorganize their administration of justice in such a way that they may have county court judges. However, in that case, they will be acting as local judges of the Supreme Court. In any matter such as the partition of property example which I gave earlier these county court judges would be acting as Supreme Court judges and therefore could meet the problem of the partition of property as they would have this superior jurisdiction.

Senator Macdonald: Apparently that objection has not arisen over the years.

Hon. Mr. Trudeau: It has not arisen?

Senator Macdonald: Over the years that the courts have been in operation. It is only in the last two years that county court judges have been judges of this court. It was in 1965

that the present administration appointed them. You are doing away with this court. I do not know if you appreciate our point of view, Mr. Minister, that we do not like to have the court done away with, for various reasons.

Hon. Mr. Trudeau: We are not really doing away with it, senator. We are asking the province to do as it did in 1965, namely to rearrange its administration of justice and change its name. We are not doing away with the court, senator, we are doing away with the name.

Senator Macdonald: We are splitting hairs again.

The Chairman: Some people cannot afford to do that!

Senator Fergusson: May I have some clarification about New Brunswick? We are in the same position, in that we have a pre-Confederation court called the court of divorce and matrimonial causes. A judge of the Supreme Court is assigned as a judge of that court. Does the new bill mean that we no longer have a court of divorce and matrimonial causes but merely have a divorce division of the Supreme Court?

Hon. Mr. Trudeau: Yes, for the purpose of divorce, that is the meaning.

Senator Fergusson: I just wanted to clarify the position.

Senator Roebuck: I should just like to ask some questions arising out of what the minister said with regard to my suggestion. In the first instance he quoted from *Putting Asunder*. I wonder if the minister has considered the difference between England and Canada. I believe the distance from John O'Groats to Land's End is about 1,000 miles of highly populated country. The distance from one end of Canada to the other is some thousands of miles. The distance between county towns and the capital of a province here in Canada is sometimes very many miles, as for instance from Toronto to the head of the lakes. Does that not make a difference when considering whether county courts located in the various provinces are not more necessary in Canada than in England?

Hon. Mr. Trudeau: It does make a difference, senator, but that is why we have a federal form of government in Canada. I suggest that at least one province, and perhaps more, is smaller than England and the judges

of the Supreme Court of the small provinces are in the same position as, or in a better position than, judges in the United Kingdom to deal with such matters.

Senator Roebuck: Most provinces are greater. I was wondering about taking cases from one county to another. That is now taken care of thoroughly in the rules of the Canadian courts. Their jurisdiction is confined usually to the county, with some exceptions. In the main the jurisdiction of the county court is confined to the county in which the judge of that particular county court is located. Why would that not apply to divorce as well as anything else?

The Chairman: That is not so in Ontario strictly speaking, because judges can be, and are, brought from outlying county courts into Toronto, for example, to take care of the case load there.

Senator Roebuck: I said with certain exceptions. It is not a question of the judge. It is rather a question of the litigant; the litigant brings the case in the county court of the area in which he is resident.

Hon. Mr. Trudeau: It is certain that in a case like that you could not use the present rules of court or we would have to rewrite our law of many years. Our test now is residence in the province. It is not residence in a county; and it is domicile in Canada.

Senator Roebuck: That gives him access to the courts generally but if he chooses the county court would he not have to choose a court in the district or county in which he is located, just the same as he has to do now in any case that he brings in the county? He cannot go shopping around.

Hon. Mr. Trudeau: He would do that if the law were rewritten to say he has to go to the county court where he is residing.

Senator Roebuck: There would be no difficulty in doing that.

Hon. Mr. Trudeau: Except that that would create a different difficulty. What happens if both parties are in the same province but they reside in different counties?

Senator Roebuck: That is taken care of now under rules.

Hon. Mr. Trudeau: It is not in the Divorce Act. The Divorce Act does not take care of it.

Senator Roebuck: Not in the Divorce Act, no: it is in the rules of court. Those condi-

tions are taken care of. Well, passing that, the Minister spoke about the partition of property. Yesterday I moved an amendment in regard to matrimonial property which is really what the Minister was referring to. I should point out that my motion was negatived; so the question of property division does not come in at the present moment.

Hon. Mr. Trudeau: It does not come into the Divorce Act, senator, but it still would have to be settled within the province, and it will have to be settled by some court. My argument is that, if we settle for the county court for divorce, we could find ourselves in a situation where one would have to go to a higher court for the division of property. This would be working contrary to the interests of the parties. Rather than simplifying the law we would force them to go to a different court to settle a matter which is intimately tied in with the divorce matter.

Senator Roebuck: That is not in force at the present moment because the divorce act that we are proposing to pass does not provide for the division of matrimonial property.

Hon. Mr. Trudeau: Quite right, but that does not end the matter. The property still has to be divided.

Senator Roebuck: Yes, and the party must go to the court in the ordinary way, like a new action. My thought was to obviate the necessity for a second action, by giving the judge who tried the divorce cause the power to settle this question of the division of property at the same time.

Hon. Mr. Trudeau: We would have done so, senator, if we had thought we would find that this is constitutional, but our judgment is that we could not do that and remain *intra vires* of the powers of Parliament.

Senator Roebuck: In other words, it was not done—much to my disappointment.

The Chairman: Senator, I suggested an alternative, you will recall, yesterday—that is, at the same time the divorce proceeding is started in Ontario, under the provisions of the bill that we are considering, an action could be started by the parties in the Supreme Court of Canada. They could both be carried along—you agreed with me on this—and when it came to trial of the divorce, the trials could proceed together, by order of the judge, so you would get a quick disposal of the situation.

Senator Fergusson: After the divorce, during the time between the divorce and the settlement of the different courts, the person who had authority over the property may get rid of it, just as people did in bankruptcy cases, for which we now have legislation which we hope will control this sort of thing.

The Chairman: The right of the wife, for instance, to claim a share in the family property exists quite independent of any divorce action which might or might not be taken at any time.

Senator Fergusson: In the family property?

The Chairman: Yes.

Hon. Mr. Trudeau: If it is being dissipated.

Senator Roebuck: I have one more statement and I am through. As far as Senator Flynn is concerned, we do not want to have two solicitors dealing with things that would call for but one. I would agree, for the province.

In a province which had by its legislation expressed its approval of a certain court within that province, I am quite sure that the dominion authorities, not necessarily, but very probably would act accordingly. So the practical solution is not out of the question right now. The theoretical one of putting it in a bill is of course fraught with great difficulty. Practically, if the Province of Nova Scotia would inform the Dominion Government and the appropriate authority, and preferably by the legislature itself, I am sure their representations would be given every possible consideration. We are not very far apart.

The Chairman: If there are no other questions to the Minister, may I say he has to go to another appointment.

Senator Flynn: I have two short questions. I would ask the Minister if he is satisfied that the appeals, for the regular appeal court of the province and also the appeal which is given to the Supreme Court on the question of law, would suffice to achieve the uniformity, despite the different courts that we may have in the province, especially taking into consideration that the present Superior Courts in the province have not all the same jurisdiction.

Hon. Mr. Trudeau: It would, I suppose, if you want to increase the number of appeals and if you want to increase the cost.

Senator Flynn: No, I spoke of uniformity of interpretation of the law, because of the appeal that is provided in this bill. The court of appeal and the Supreme Court would tend to give the uniform interpretation of this act despite the jurisdiction given to the first court.

Hon. Mr. Trudeau: That is right. If you are asking whether after a period of interpretations and costs and delays, there would be uniform application of law—I would agree with you.

Senator Flynn: We have to go through that anyway.

Hon. Mr. Trudeau: The answer I would give is that, if this happens, we would probably as a government—assuming we are still there—cease to argue that this must be a Supreme Court matter. Perhaps at such time, when such a uniform interpretation has occurred, it would be appropriate then to turn to the county courts or the family courts if set up.

Senator Flynn: I do not see any necessity for that.

The Chairman: It is a judgment decision at this time.

Senator Fergusson: I am sure the Minister has had at least some of the argument that I made in the Senate about clause 4(1)(e)(ii), especially stressing that it really is very unfair to a spouse, who has committed no offence at all, to be divorced. I think that the legislation as it now stands is not fair to such a spouse. We take away a lot of things that were accumulated and were part of the things she could depend on such as, for instance, the money she has helped to pay into the insurance on her husband, or for his pension. This is absolutely wiped out, and also any rights she has under the Dower Act.

I agree with Senator Roebuck that the order should be made at the time the divorce decree is granted. I understand that the Government and the department are not willing to accept this, but I would like to point out that more consideration is given in some other countries to such a spouse.

In Australia and New Zealand such an order is made at the time of a decree.

I would like to ask that this be reviewed again. I realize that the deputy minister says that there is no reason to consider it but I am sure there are many people who feel it is very unfair.

While I am speaking, may I say I am very pleased with this bill and delighted that we are bringing it in. I do not want it to be inferred that I am not agreeing with it, it is merely that I would like to see the best kind of bill we possibly could have. To me this is one area in which not sufficient consideration has been given by the department.

Senator Roebuck: Now, if the minister is leaving, perhaps at this point I might express the views of every one of us here by saying we are very grateful to him for coming. Please do not think that because we have struggled rather earnestly and vigorously on details that it means very much with regard to our opinion of the bill as a whole. I have stated on many occasions that I think this is a good bill and highly in the public interest, and I compliment the department on its work in drawing the bill. I have not agreed entirely with the officials here on details that are perhaps not very important in view of the bill itself and the great reform that is being made, but I hope to have the honour of moving third reading of this bill as we will report it in due season in the Senate. I am very happy with this bill notwithstanding our arguments over small details.

Hon. Mr. Trudeau: Mr. Chairman, I should like to thank Senator Roebuck. I am particularly grateful that he mentioned the officers of my department, because they have done a great deal of work on this bill and I feel that they should be publicly thanked. It is in order, too, to thank the senators, as I have already done in the House of Commons, and the Senate for the ground work that they have done over the years in the matter of divorce, by the changes in recent years and especially in preparing public opinion for acceptance of the new law contained in this bill.

It is quite obvious that the Government could not have proceeded with this bill and that it would not have carried the sentiment of Parliament and of the people if you, senator, and your colleagues, had not done such masterful work. So I am more thankful to you than you are to me.

Senator Roebuck: We are all happy.

The Chairman: I think we are through with our questioning, Mr. Minister. Thank you very much.

Hon. Mr. Trudeau: Thank you, Mr. Chairman. I have to get back to the Cabinet.

The Chairman: Now, senators, we have stood for consideration section 2(e) in order to give the minister the opportunity to be here. We have now heard him. We now have two amendments proposed. First is Senator Roebuck's amendment concerning the addition of county courts and district courts to each enumeration of a province, other than the province of Quebec, I would take it, where there is no such court. Are you ready for the question?

Senator Roebuck: Before doing that, may I say that there is not only my resolution but that there has also been a good deal of discussion and suggestions by others. I would like to know if Mr. Maxwell has any comment to make before we vote on it.

The Chairman: You mean any additional comment.

Senator Roebuck: All right, additional comment. He had overnight to think about this and perhaps he has something to say.

Mr. Maxwell: I feel, Senator Roebuck, that the Minister of Justice has pretty well covered the ground in so far as the question of county court jurisdiction is concerned at this time. I do not think I could add much to what he has said. If there is any point that seems unclear, I would be glad to comment on that.

Senator Roebuck: What about the designation of the Supreme Court of Ontario? Why not use the proper designation?

The Chairman: That is another question. I am going to come to that afterwards.

Senator Roebuck: I see. Very well.

The Chairman: That is not in your amendment, and I have certain ideas I would like to say on that. My own view is that, if somebody or something has a name officially, that is the name we should use.

Senator Roebuck: Why of course we should.

The Chairman: However, we will come to that in a moment. What we are dealing with now is the suggested amendment to add county court and district court to the various enumerated provinces.

Senator Aseltine: I do not think we should stress the point, Mr. Chairman. I did so in my speech on second reading, but in view of the statement made by the minister, I am not prepared to press that point.

The Chairman: But I have Senator Roebuck's amendment. Unless he withdraws it, I must put it to a vote, and I understand he wishes it to go to a vote. Is that right, Senator?

Senator Roebuck: I do not think there is any necessity of voting it down. You voted down all the rest of my amendments.

The Chairman: Are you withdrawing it, then?

Senator Roebuck: Yes, I withdraw it.

The Chairman: Senator Flynn?

Senator Flynn: I insist on mine, especially since I have had the support of Senator Roebuck. He has said that the federal Government would certainly not object to recognizing that a court be properly equipped as suggested by a province. Therefore I think this bill should have the machinery right in it to accept such a wise recommendation coming from a provincial government.

In view of the observations made by Mr. Maxwell yesterday, I will not move the exact amendment that I had suggested, but I will move an amendment as follows:

Strike subparagraph (e) of clause 2 and substitute therefor the following:

- (e) "court" means
 - (i) for any province
 - (a) where no proclamation has been issued under subsection (1) of section 22 the Divorce Division of the Exchequer Court, or
 - (b) where a proclamation has been issued under subsection (1) of section 22, the court mentioned in said proclamation.
 - (ii) for the Yukon Territory or Northwest Territories, the territorial court thereof.

I must add that I will have to move a consequential amendment to section 22, if this amendment passes.

The Chairman: We realize that if the amendment is passed we will have to do so. Now we have had a lot of discussion. Are you ready for the question on Senator Flynn's amendment? Those in favour of the amendment please indicate. Those contrary, if any? The amendment is lost.

Section 2(e) of the bill which was stood yesterday then carries.

Senator Macdonald: On division.

Senator Roebuck: And subject to the name of the court.

The Chairman: Yes, before we carry the section as such, there is still the question of the name of the court. Inherently, I have the view that, if something or some person has an official name, that is the name that should be used for the designation. Therefore, so far as Ontario is concerned, the designation to which Senator Roebuck referred yesterday, which is the statutory designation of the Supreme Court of Ontario, is the one that should be used.

Senator Roebuck: The High Court of Justice.

The Chairman: And the High Court of Justice. Then as to the other provinces, Mr. Maxwell, is your description an accurate description of the proper statutory title?

Mr. Maxwell: No, it is not. Perhaps I can make just a little dissertation on this point.

The Chairman: Yes, will you?

Mr. Maxwell: In my opinion the proposed amendment does not produce any different legal result, but simply means that the bill would be lengthened and we would have to deal with each province separately in designating the court. By way of example, in dealing with the Province of New Brunswick, we would have to specify the Queen's Bench Division of the Supreme Court of New Brunswick. In the case of Nova Scotia we would have to specify the Trial Division of the Supreme Court of Nova Scotia. The situation would be similar in the case of Alberta.

Now there is, in my submission, no possible ambiguity in the provision as it is now written and, in the case of the Province of Ontario, it is my considered opinion that there could be no doubt that it describes generally the High Court of Justice for the Province of Ontario.

Senator Roebuck: But not specifically.

Mr. Maxwell: But not specifically. Now I think perhaps I mentioned yesterday that it is not always the most desirable thing in the world—and I know Senator Hayden has expressed a different view—to use a particular name, because that name may be changed tomorrow by provincial legislation.

Senator Roebuck: This has stood for 75 years in Ontario.

Senator Fergusson: It is over 100 years in New Brunswick.

Mr. Maxwell: There have been changes recently in Nova Scotia. In one particular instance I could mention, a period of some five years elapsed before we realized that the name of the court in Prince Edward Island had been changed. This bill properly describes the court now but there are a number of federal statutes which I regret to say do not properly identify the Supreme Court of Prince Edward Island. This can happen.

The Chairman: Well, we now have Senator Roebuck's proposed amendment which deals with giving the statutory designation of the Supreme Court in Ontario which happens to be the High Court of Justice in Ontario. I take it the proposed amendment is broad enough to require the statutory designation of the names of the courts in provinces that appear in Roman numeral I in section 2 (e), is that correct?

Senator Roebuck: Yes.

The Chairman: It is an amendment which we could discuss for a very long time, but I think we are now ready for action. Would those in favour of the amendment please signify in the usual way by raising their hands? Those contrary, if any? The amendment is lost ten to four.

Senator Roebuck: I can see there is not much use in coming to this committee with amendments.

Senator Everett: May I ask Mr. Maxwell what opposition he would have to the designation of the court being entirely in the hands of the Governor in Council without reference to any province?

Mr. Maxwell: Perhaps I should say this: There would be no constitutional or legal objection to this, but I would be inclined to think that it might very well be the view of the public generally that Parliament, and by that I mean the institution of Parliament, should assume responsibility so long as the Constitution charges it with the responsibility of making this kind of a decision. In short, it

is not the kind of matter, and I am not, perhaps, expressing my personal view here, but it is not the kind of matter that should be turned over to executive action. I think this could be the result of Senator Flynn's proposal. I think it would mean turning over the power to designate the ultimate tribunal which, in my view, is a matter of ultimate political decision and lies with Parliament.

Senator Aseltine: Has the department considered that for a few years at least the number of divorce cases will be greatly increased or at least will be increased to some considerable extent? If we pass this bill as it now stands will not that mean that many more superior court judges will have to be appointed in order to carry out the work?

Senator Macdonald: Not necessarily. They can make county court judges local judges of the superior court if necessary.

Mr. Maxwell: This may very well happen in some jurisdictions. It is a little hard to say what the future will hold here. I think we will just have to wait and see what happens. I think there may well be some additions ultimately but I do not think the general feeling is that there is going to be a radical increase, in the number of divorces. There may be an increase but, if that should be the case, I think it will be a gradual increase. We must keep in mind that judicial business generally is increasing in this country and I am sure there will be increases in the divorce jurisdiction as well.

The Chairman: Shall the preamble carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill as amended?

Hon. Senators: Agreed.

At 10.50 a.m. the committee concluded its consideration of the bill and proceeded to the next order of business.



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 24

*Complete Proceedings on Bill S-32,
intituled:*

*"An Act to amend the Territorial Lands Act, the Land Titles Act
and the Public Lands Grants Act".*

THURSDAY, FEBRUARY 1st, 1968

WITNESS:

*Department of Indian Affairs and Northern Development: Digby Hunt,
Director, Resources and Development.*

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C., 51303
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	O'Leary (<i>Carleton</i>)
Aseltine	Gouin	Paterson
Beaubien (<i>Bedford</i>)	Haig	Pearson
Beaubien (<i>Provencher</i>)	Hayden	Pouliot
Benidickson	Irvine	Power
Blois	Isnor	Rattenbury
Bourget	Kinley	Roebuck
Burchill	Lang	Smith (<i>Queens-</i>
Choquette	Leonard	<i>Shelburne</i>)
Cook	Macdonald	Thorvaldson
Croll	MacKenzie	Vaillancourt
Dessureault	Macnaughton	Vien
Everett	McCutcheon	Walker
Farris	McDonald	White
Fergusson	Molson	Willis—(45).
Gélinas		

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, January 30th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Thompson moved, seconded by the Honourable Senator Laird, that the Bill S-32 intituled: "An Act to amend the Territorial Lands Act, the Land Titles Act and the Public Lands Grants Act", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thompson moved, seconded by the Honourable Senator Laird, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

John F. MacNeill,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, February 1st, 1968.

(27)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.55 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Provencher*), Benidickson, Burchill, Connolly (*Ottawa West*), Cook, Everett, Fergusson, Flynn, Gershaw, Haig, Irvine, Lang, Leonard, Macdonald, MacKenzie, McDonald, Roebuck, Smith (*Queens-Shelburne*), Thorvaldson and Willis. (22)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of the Committees.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill S-32, "An Act to amend the Territorial Lands Act, the Land Titles Act and the Public Lands Grants Act", was considered.

WITNESS:

Department of Indian Affairs and Northern Development:

Digby Hunt, Director, Resources and Development.

On motion of the Honourable Senator McDonald it was *Resolved* to report the said Bill without amendment.

At 11.20 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, February 1st, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-32, intituled: "An Act to amend the Territorial Lands Act, the Land Titles Act and the Public Lands Grants Act", has in obedience to the order of reference of January 30th, 1968, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Thursday, February 1, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-32, to amend the Territorial Lands Act, the Land Titles Act and the Public Lands Grants Act, met this day at 10.55 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: We have with us this morning Mr. Digby Hunt, Director of Resources and Development, Department of Indian Affairs and Northern Development. Mr. Hunt, would you care to give—I was going to say a succinct explanation of this bill because I don't think it is a contentious bill.

Mr. Digby Hunt, Director of Resources and Development, Department of Indian Affairs and Northern Development: Mr. Chairman and senators, the purpose of this bill is to simplify the procedures whereby the federal lands in the Yukon and Northwest Territories may be disposed of to the public for purchase for their various purposes. At the present time the procedure for doing this is rather lengthy. On application for purchase of land in either of the territories, once the purchase has been completed the procedure has to follow the issue of Letters Patent under the Great Seal of Canada. This procedure has been in force for many years. Unfortunately it is rather a lengthy one. It takes, with the best will in the world, approximately six to eight weeks to complete. I could provide

you with all the steps involved if you wanted to hear them. However, it has to go through approximately four different departments, and the signatures of several senior officials in each department have to be obtained. This has led to considerable inconvenience to the public in both territories. It is particularly difficult because usually the main purpose of acquiring land, of course, is to put some improvement on it and the construction season in both territories is much shorter than it is south of the 60th parallel.

The Chairman: It may also be needed for mining purposes.

Mr. Hunt: Yes.

The Chairman: And any undue delay in getting title might interfere with financing arrangements.

Senator Aseltine: Is this the only way of doing it?

Mr. Hunt: Well, it is a new approach.

Senator Aseltine: Is there not another way under the Land Titles Act? Is it proposed to transfer the natural resources to the territories in any way?

Mr. Hunt: The proposed amendments here would in no way affect the present status with respect to ownership and control of the resources of the territories. This is simply a change in the method of disposing of surface land.

The Chairman: Is it not in fact an alternative procedure to the issue of letters patent? The ordinary way, as we know, is to get Letters Patent from the Crown, and the particular person involved would take his title in that fashion in the first instance. This is proposing a shorter method—in other words, doing short-division instead of long-division—and they will use a procedure called the notification?

Mr. Hunt: Yes.

Senator Aseltine: And get the same result?

Mr. Hunt: Yes. The notification instead of the Letters Patent would be...

Senator Aseltine: Is there enough of a check to prevent any skullduggery?

The Chairman: I think that is the real question. Do I end up, on the procedure by notification, with a clear title from the Crown?

Mr. Hunt: Yes, sir. The Torrens system is in effect in both territories, and the notification is sent by the minister or commissioner, whichever the case may be, direct to the Registrar of Land Titles, who has to satisfy himself that there is a proper description of the land and that the notification is in order. Then he will, of course, issue a duplicate certificate of title, and it is hoped the procedure—which now takes, say, two months plus the normal negotiation for sale—will take seven to ten days plus the normal negotiation for sale period.

Senator Burchill: Who has the authority to sell the land?

Mr. Hunt: All lands in the Yukon and Northwest Territories which have not been alienated from the Crown remain the property of the Crown in right of Canada, and this is administered by the Minister of Indian Affairs and Northern Development. He has the authority to sell the lands. At the same time, the administration has transferred not the ownership but the control and administration of certain Crown lands within communities and within municipalities to the commissioner of each territory; and it is proposed that the commissioner also be authorized to issue a notification for those lands within the communities that are under his administrative control, but, of course, the administration and control is not transferred to either one of the commissioners. It is only done, on the recommendation of the Minister of Indian Affairs and Northern Development, by the Governor in Council.

Senator Burchill: But the commissioner has authority to arrange the details, negotiations, and all that?

Mr. Hunt: Once the land has been transferred to him within communities, he has

the full authority to arrange the price, and it is intended so that he may deal on the spot with the people.

Senator Everett: All the land is appropriated to him now, those lands in developed communities?

Mr. Hunt: Yes. I will qualify it by saying that in the Yukon territory nearly all the land within communities and municipalities has been passed over to the control and administration of the commissioner; and it is fully intended that any land which yet remains under the control of the commissioner shall be conveyed to the commissioner.

In the Northwest Territories the territorial government is just being organized, but over the next few months the same situation will be brought about, whereby the Commissioner of the Northwest Territories will have full administration and control of lands within communities.

Senator Everett: Is it not a fact that he can grant lands without reference to the minister?

Mr. Hunt: Yes, he will be able to.

Senator Everett: If this bill passes?

Mr. Hunt: Yes.

Senator Everett: Without any reference to the minister at all?

Mr. Hunt: Yes.

Senator Everett: Really, it has two-fold purpose. It simplifies the system; but it also transfers the authority to grant, palpably anyway, lands, to the commissioner from the minister. So the minister is losing control, in effect?

Mr. Hunt: Only lands that the minister recommends to be transferred to the commissioner.

Senator Everett: But it is the policy of the department to transfer the lands to the commissioner?

Mr. Hunt: Yes.

Senator Everett: That is why I say "palpably."

The Chairman: But once lands are transferred from the minister to the commissioner,

the commissioner deals with them afterwards. Therefore, to the extent that the commissioner has title to the lands now, he deals with them.

Mr. Hunt: Yes. Even today some of the lands have been transferred to the control and administration of the commissioner; but, technically, when he wants to sell a parcel he has to come back to the minister and say, "I have made this arrangement. Will you obtain an Order in Council authorizing it?"

The Chairman: Under this act the minister, in effect, would lose that control to the commissioner?

Mr. Hunt: Yes, he would transfer it to the commissioner.

The Chairman: Are there any other questions? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 25

Complete Proceedings on Bill C-192,
intituled:
"An Act to amend the Excise Act"

THURSDAY, FEBRUARY 22nd, 1968

WITNESSES:

Department of Finance: F. R. Irwin, Director, Tax Policy Division.

Department of National Revenue: E. N. Smith, Director, Excise Duty.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Molson
Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Bedford</i>)	Grosart	Paterson
Beaubien (<i>Provencher</i>)	Haig	Pearson
Benidickson	Hayden	Pouliot
Blois	Inman	Power
Bourget	Irvine	Rattenbury
Burchill	Isnor	Roebuck
Carter	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Laird	Thorvaldson
Cook	Lang	Vaillancourt
Croll	Leonard	Vien
Dessureault	Macdonald	Walker
Everett	MacKenzie	White
Farris	Macnaughton	Willis—(49).
Fergusson	McCutcheon	
Gélinas	McDonald	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, February 19th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Langlois moved, seconded by the Honourable Senator Cameron, that the Bill C-192, intituled: "An Act to amend the Excise Act", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Cameron, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, February 22nd, 1968.

(28)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (Chairman), Aird, Benidickson, Burchill, Carter, Connolly (Ottawa West), Cook, Croll, Everett, Fergusson, Gélinas, Inman, Lang, MacKenzie, McDonald, Rattenbury and Smith (Queens-Shelburne)—(17).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 300 English and 300 French copies of these proceedings be printed.

Bill C-192, "An Act to amend the Excise Act", was considered, clause by clause.

WITNESSES:

Department of Finance:

F. R. Irwin, Director, Tax Policy Division.

Department of National Revenue:

E. N. Smith, Director, Excise Duty.

On motion of the Honourable Senator Croll it was *Resolved* to report the said Bill without amendment.

At 9.55 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, February 22nd, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-192, intituled: "An Act to amend the Excise Act", has in obedience to the order of reference of February 19th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Thursday, February 22, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-192, to amend the Excise Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators, can we have the usual motion to print the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: We have before us Bill C-192. Our witnesses are Mr. F. R. Irwin, Director of the Tax Policy Division, Department of Finance, and Mr. E. N. Smith, Director of the Excise Duty Branch, Department of National Revenue.

Mr. Irwin, are you going to take the lead in this?

Mr. F. R. Irwin, Director, Tax Policy Division, Department of Finance: Mr. Chairman, we are here to provide what help we can by way of information and to answer any questions.

The Chairman: Since the only principle, if any, running through the bill is raising taxes a bit, what I was going to suggest was that we should deal with each section as we go along, which would be the most expeditious way of dealing with the matter. Is that agreed?

Hon. Senators: Agreed.

The Chairman: Would you deal with section 1, Mr. Irwin?

Mr. Irwin: This proposed amendment, as was explained in the debate in the Senate, is intended to move an allowance on account of wastage from its present place in the law to a new location. It does not change the amount of the allowance. However, there is a purpose in making the change, which is to prevent this wastage allowance applying to imported beer.

The wastage allowance is made necessary because the amount of duty on beer is measured during the brewing process, while the beer is in the fermenting vat, and there will be some loss in volume from that point until it is put in kegs or bottles. This wastage allowance has been in the law for quite a number of years.

This amendment will move the allowance from the schedule to a part of the act. The allowance has not been available to imported beer in the past. There is, of course, no need for wastage allowance for imported beer, which usually comes into the country in bottles, or kegs. It is beyond the stage where wastage occurs. Because of a proposed change in the tariff, which if it becomes law will provide that the corresponding levy in the tariff will apply to whatever is provided in the Excise Act, it would have followed that the wastage allowance would in future be available to imported beer. It is therefore proposed that it be moved from the schedule where the rates are set forth to the body of the act. As a result the wastage allowance will apply only to beer manufactured in Canada.

The Chairman: Shall section 1 carry?

Hon. Senators: Agreed.

The Chairman: Section 2 deals with an increase in the tax on spirits.

Mr. Irwin: This adds \$1.25 per gallon to the excise duty on spirits.

Senator Rattenbury: How does that compare with the excise duty on, say, whisky?

Mr. Irwin: "Spirits" is the word used in the act to cover whisky, rum, gin, all manner of distilled liquors except brandy.

Senator Rattenbury: Is beer on the same basis, that is the proof gallon?

Mr. Irwin: No, sir, beer is taxed on a volume basis, so much per gallon. Spirits—whisky, gin, vodka, and so on—are taxed on a proof gallon.

Senator Rattenbury: There is no relation between the tax on beer and the tax on a proof gallon of spirits?

Mr. Irwin: There is no relation, no sir.

Senator Smith (Queens-Shelburne): I wonder if Mr. Irwin could help me understand this better. In terms of bottles of imported whisky, what does this mean by way of increased taxation?

Mr. Irwin: First, perhaps I should have explained that the excise duties apply only to products manufactured in Canada and that there is a corresponding levy under the tariff to apply to imports. Another resolution, and eventually another bill, would impose an additional \$1.25 under the tariff on imported spirits. This will only be done for a short time, because this other change that I have mentioned will eventually, we hope, make this automatic, if you will—so the tariff will automatically pick up any increase that is enacted in the Excise Act. However, this is by the way. The increase is \$1.25 a gallon. This amounts to about 15½ cents per 25-ounce bottle of 70 per cent proof whisky, rum or gin.

Senator Benidickson: You say "70 per cent proof". Have we still got the World War II law in force as the maximum of proof at manufacture?

Mr. Irwin: This is not a federal regulation, sir. I believe it may be regulated by the provinces. Perhaps Mr. Smith could deal with it.

Mr. E. N. Smith, Director, Excise Duty, Department of National Revenue: No, sir. The federal restriction went out with the War Measures Act; but the provinces have felt it desirable to maintain 30 underproof or 70 per cent proof.

Senator Benidickson: In the United States they have no restriction?

Mr. Smith: There is no federal restriction in Canada, nor indeed under the provincial law. The restriction is the desire of the boards to sell at 30 underproof or 70 per cent proof.

Senator Benidickson: That is a maximum?

Mr. Smith: Consequently there is more volume.

Senator Smith (Queens-Shelburne): Let us get it straightened out a bit. I notice it is not contained in this act—but is the increase in the bottle of beer under the new budget—

The Chairman: It is a later item here.

Senator Croll: The last item.

Senator Smith (Queens-Shelburne): Could we have a comparison now, while we are talking about this subject?

Mr. Irwin: It is about 8½ cents per 24-bottle case of 12-ounce bottles. That is 8½ cents for 24 bottles. It is about one-third of one cent a bottle. I might add that in each case where I am quoting these amounts I have included the sales tax, which is increased a little bit as soon as we impose the excise duty.

Senator Everett: At what level is the tax imposed? At the manufacturer's level?

Mr. Irwin: Yes, sir.

Senator Everett: Does he generally put a mark-up on top of that?

Mr. Irwin: I do not know anything about the pricing policies of the distilleries.

Senator Rattenbury: The provincial governments take a mark-up on that.

The Chairman: You have two marks. The provincial government takes its mark-up and the liquor commissions has its mark-up, so it multiplies quite a bit.

Senator Everett: So it becomes a product on which two mark-ups are applied.

Senator Smith (Queens-Shelburne): Would it be correct—you do not have it in front of you—that the figure is not much more than half a cent per pint bottle of beer?

Mr. Irwin: Yes, sir.

Senator Mackenzie: Twelve ounces.

Senator Smith (Queens-Shelburne): Well—

Senator MacKenzie: I do not like to be deceived by calling them “pints”.

The Chairman: The witness said “bottle”.

Senator Carter: When the federal Government collects this tax, does it just levy it on production cost or on the selling price of the manufacturer?

Mr. Irwin: No, it is levied on the amount of proof gallons of spirits produced. In the case of beer, it is levied on the number of gallons produced.

Mr. Smith: Each measure.

Senator Carter: In the tank prior to its final bottling?

Mr. Irwin: In the case of beer, yes.

The Chairman: This tax on spirits distilled in Canada does not bear any relationship to the price that may be paid for it. It is so much per gallon on strength of proof.

Senator Everett: But, in the case of spirits, the tax would be imposed when in the bottle itself? You would not impose it on volume in the tank, would you?

Mr. Irwin: Perhaps I should refer to Mr. Smith on this, as he is much more familiar with the methods than I am. The Excise Act provides several methods of computing the amount of excise duty on spirits.

Mr. Smith: Basically it is something like this. It is per proof gallon. It is called an excise duty because of the difference between the duty and the tax—although both are taxes. The amount named in the schedule to the Excise Act is due and payable immediately that product appears in Canada, whether it is being imported across the border or from elsewhere. Where it is manufactured or grown in Canada, it is liable for an excise duty.

Senator Everett: So, when we are talking about spirits distilled in Canada—

Mr. Smith: Spirits distilled in Canada are subject to duty immediately found in a closed receiver. Where it comes directly from the still, it must be either warehoused or duty must be paid. The warehousing is done to avoid having to pay the duty immediately, when they have to keep the spirits for six years, perhaps.

Senator Everett: Do you permit the distiller a shrinkage allowance—if there is a shrinkage, and I presume there would be.

Mr. Smith: Yes. The Excise Act provides a maximum which may be allowed for warehousing. It is 8 per cent the first year. It has to be proven, otherwise it would run up to 50 per cent maximum. Only the amount allowed is actually written off.

Senator Everett: They are allowed to write that off against excise tax they pay?

Mr. Smith: Write off, in proof gallons.

The Chairman: “Write off” may be the wrong word.

Mr. Smith: If you put a thousand gallons away and bottle only 750 gallons you pay only on 750—because it is within the allowance in the Excise Act.

Senator Everett: When you put 1,000 gallons away, when does the tax become payable?

Mr. Smith: It either must be paid, or the spirits must be warehoused in bond.

Senator Everett: So when it is taken out of the warehouse, it is payable then?

Mr. Smith: That is right, sir.

The Chairman: There is another item in here—spirits distilled from wine, also part of clause 2.

Mr. Irwin: Yes, sir. This was explained, I notice, in the debate in the Senate. The purpose of this amendment is to permit spirits distilled from wine that is made from honey to be used in the processing of wine. As the law reads at present, only spirits distilled from wine produced from native fruits qualify for this exemption. The amendment will strike out the words “produced from native fruits”, so that spirits distilled from wine which is made from honey—I do not know of anything else that is used—will be free of excise duty.

The Chairman: This deals with spirits that are used to fortify the wine?

Mr. Irwin: Correct, sir.

The Chairman: Shall this clause pass?

Hon. Senators: Carried.

The Chairman: Clause 3 deals with brandy, is that right?

Mr. Irwin: Yes, sir. This increases the rate of duty on brandy by \$1.25 per proof gallon.

The Chairman: Are there any questions?
Is it carried?

Hon. Senators: Carried.

The Chairman: Clause 4 deals with the increase in tax on beer. You have already said something about it. Are there any questions which any person would like to ask?

Senator Smith (Queens-Shelburne): Perhaps, for the purpose of the record or someone checking my mathematics, my mathematics indicate to me that the increase in the case of a shot of liquor at the Château bar, as far as the Federal Government is concerned, is one cent a drink. As to the increase when you go to a tavern—the federal tax increase amounts to half a cent per pint bottle of beer. The reason for the relative increase is that it is really a little easier on those many people who prefer to drink beer for economic and other reasons. There was some suggestion made that this was not fair to the beer drinker, but on this basis I do not think that it is anything but an advantage.

The Chairman: I was not quite sure, senator, that the taste for beer was economic—I mean, that that was the urge.

Senator Smith (Queens-Shelburne): They tell me that if you drink six in a row it is quite good and is economic.

The Chairman: Are there any other questions? Is it carried?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Senator Everett: I do not think you dealt with clause 5. Has the Government been collecting this tax since the 1st of December, 1967?

Mr. Irwin: I believe so.

Senator Everett: Thank you.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Carried.

The Chairman: That is our work for today—so far today.

The committee adjourned.



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 26

Complete Proceedings on Bill C-191,
intituled:
"An Act to amend the Excise Tax Act"

TUESDAY, FEBRUARY 27th, 1968

WITNESSES:

Department of Finance: F. R. Irwin, Director, Tax Policy Division.

Department of National Revenue: A. P. Mills, Director, Excise Tax Operations.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Molson
Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Bedford</i>)	Grosart	Paterson
Beaubien (<i>Provencher</i>)	Haig	Pearson
Benidickson	Hayden	Pouliot
Blois	Inman	Power
Bourget	Irvine	Rattenbury
Burchill	Isnor	Roebuck
Carter	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Laird	Thorvaldson
Cook	Lang	Vaillancourt
Croll	Leonard	Vien
Dessureault	Macdonald	Walker
Everett	MacKenzie	White
Farris	Macnaughton	Willis—(49).
Fergusson	McCutcheon	
Gélinas	McDonald	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 22nd, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Burchill, for second reading of Bill C-191, intituled: "An Act to amend the Excise Tax Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, February 27th, 1968.

(29)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Bourget, Burchill, Carter, Cook, Croll, Gouin, Inman, Irvine, Laird, Leonard, MacKenzie, McDonald, Paterson, Pouliot, Smith (*Queens-Shelburne*) and Thorvaldson. —(18).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill C-191, "An Act to amend the Excise Tax Act", was considered, clause-by-clause.

WITNESSES:

Department of Finance:

F. R. Irwin, Director, Tax Policy Division.

Department of National Revenue:

A. P. Mills, Director, Excise Tax Operations.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.20 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

TUESDAY, February 27th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-191, intituled: "An Act to amend the Excise Tax Act", has in obedience to the order of reference of February 22nd, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

TUESDAY, February 27th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-191, intituled: "An Act to amend the Excise Tax Act", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Tuesday, February 27, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-191, to amend the Excise Tax Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have one bill before us this morning, Bill C-191, which is to amend the Excise Tax Act.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: We have with us today Mr. F. R. Irwin, Director, Tax Policy Division, Department of Finance, who will give us the explanation required; and also Mr. A. P. Mills, Director, Excise Tax Operations, Department of National Revenue.

Honourable senators, this should be an interesting bill, as it includes many tax reductions. It is always nice to have a look at those. As I have said before, there is no principle in this except that of taking your money or handing it back to you. Therefore, we may go through this bill clause by clause. Mr. Irwin.

Mr. F. R. Irwin, Director, Tax Policy Division, Department of Finance: Mr. Chairman, honourable senators, I will try to answer any questions and provide any explanations that the committee may wish.

The Chairman: Would you deal with clause 1, please?

Mr. Irwin: Section 1 provides a consequential amendment, consequential upon the amendment to make drugs exempt from sales

tax. It merely deletes the words "or pharmaceuticals" from this definition of a manufacturer or producer.

The Chairman: Is section 1 carried?

Hon. Senators: Carried.

Mr. Irwin: Section 2 merely adds the underlined words in line 22. It is consequential on an amendment later in the bill.

Hon. Senators: Carried.

Mr. Irwin: Section 3 adds a new section 28A to the act, to impose additional taxes on wines. The new tax of 2½ cents per gallon will apply to wines containing not more than 7 per cent of absolute alcohol by volume; and the new tax of 5 cents per gallon will apply to all wines containing more than 7 per cent of absolute alcohol by volume. The wines which contain not more than 7 per cent absolute alcohol by volume are generally ciders. Wines containing more than 7 per cent of absolute alcohol by volume would be the table wines, sherries and wines of that kind.

The Chairman: Can you translate approximately what the additional cost might be per bottle by reason of this tax?

Mr. Irwin: It is very small, because this tax is by volume. I suppose that a bottle of wine usually contains 25 or 26 ounces, although they do come in various sizes. So it would be, in the case of the 2½ cents per gallon, less than a cent per bottle, and, even for the five cents per gallon, it would be around one cent per bottle. It is in that order.

The Chairman: What revenue do you expect to get out of this?

Mr. Irwin: Not a great deal of revenue, Mr. Chairman. In a full year perhaps three-quarters of a million dollars. The tax increase here is intended more to maintain the balance between various alcoholic beverages than to be a straight revenue-producing measure by itself.

The Chairman: Last week we were dealing with spirits, brandy and beer.

Mr. Irwin: Yes, sir.

The Chairman: So this is playing no favourites, then, in the whole family.

Mr. Irwin: That is the idea.

Senator McDonald: Does the present section 28 deal with a tax on wines, Mr. Chairman?

Mr. Irwin: Yes, sir.

Senator McDonald: I wonder why it is called a special excise tax on wines.

Mr. Irwin: The present excise tax on wines is unusual in that it applies only to wines produced in Canada. There is a corresponding levy under the tariff, and for that reason it was not easy technically to amend that section. This tax being imposed by section 28A will apply to both imports and wines produced in Canada.

Senator Blois: Is cider considered wine under this act, Mr. Chairman?

Mr. Irwin: Yes, senator.

The Chairman: Except, I notice, Mr. Irwin, that section 28 in the Excise Tax Act is a section which deals with a tax on wines, and it reads:

28A.(1) There shall be imposed, levied and collected, in addition to the tax, if any, applicable under section 28, the following excise taxes:

(a) a tax of two and one-half cents per gallon on wines of all kinds containing not more than seven per cent of absolute alcohol by volume,...

What we are providing here in section 3, in the new section 28A (1)(a), is a tax of 2½ cents per gallon. Is that in addition?

Mr. Irwin: Yes, sir.

The Chairman: In addition to the tax. The tax already existing is an excise tax. So this is an additional excise tax. What you really have is 2½ cents per gallon on wines of all kinds—

Senator Cook: As produced in Canada, but there is a 2½ cent tax on wines imported.

The Chairman: Yes. Subsection (2) says that "the excise taxes imposed by subsection (1)(b) in case of wines other than wines imported into Canada, are payable at the time of sale by the Canadian manufacturer."

In section 28A, in the new one which is proposed, it is all wines, but it is another tax on Canadian wines.

Senator Cook: Yes, but there is a tax also on imported wines. If you amend section 28 you only affect Canadian wines.

Senator MacKenzie: Just following on a question put by Senator Blois, this would not apply to sweet cider but only to hard cider.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Sweet cider would be under 7 per cent alcohol by volume.

Mr. Irwin: It would have to have some alcoholic content before a tax would go on it.

The Chairman: Sweet cider has no detectable alcoholic content. Are there any other questions on this?

Senator Burchill: Mr. Chairman, is the consumption of wines by Canadians increasing?

Mr. Irwin: I believe so, yes, sir.

Senator Burchill: I am told that Canadians are not wine drinkers. Is wine drinking increasing?

Mr. Irwin: I believe so, sir. The revenue statistics would suggest that it is increasing each year.

Senator Burchill: That is what I meant.

Senator Cook: Is that because there are more Canadians or because we are drinking more wine?

Mr. Irwin: I cannot answer that.

Senator Croll: Is there any way of knowing whether the increase in consumption of Canadian wines is comparable to the increase in that of imported wines?

Mr. Irwin: I have not any statistics available to answer that. It might be possible by examining the revenues from wines in past years to form conclusions. I expect also that the association representing the wine producers in Canada would have the figures, but I have not got them right here.

Senator Croll: I am of the view that over the years Canadian wines have become more acceptable to Canadians and the price has been attractive. The product is much better than it was in the past.

The Chairman: Is section 3 carried?

Hon. Senators: Carried.

The Chairman: Would you explain section 4, Mr. Irwin?

Mr. Irwin: This amendment deletes the words "or pharmaceuticals" and it is consequential upon the exemption provided for drugs in a later section of the bill.

Hon. Senators: Carried.

The Chairman: Section 5.

Mr. Irwin: Section 5 provides a number of amendments which are all consequential or are for clarification. They are also in my view very complicated. I will run through them as best I can, if you wish.

The Chairman: Yes, will you do that?

Mr. Irwin: The amended subsection (2) which starts at line 39 substitutes the words "three-ninths" for the words "50 per cent". This is not a change in the rate of tax that has been imposed in the past. The schedule referred to is Schedule IV, and it describes articles manufactured by the blind or by the deaf and dumb, and the rate of sales tax on these articles since 1931 has been half the ordinary rate. That is, the rate should be 6 per cent instead of 12 per cent. However, some uncertainty has arisen because nine points of the sales tax are imposed under the Excise Tax Act and three points of the sales tax are imposed under the Old Age Security Act. As the law reads at present it might be interpreted as imposing 50 per cent of nine points, that is, 4.5 per cent, under the Excise Tax Act, plus three points under the Old Age Security Act, for a total of $7\frac{1}{2}$ per cent.

Senator Croll: Before you lose me completely, how does the Old Age Security tax get into it? It is a proportion of it. Is that what you are saying?

Mr. Irwin: The Old Age Security Act imposes a tax of 3 per cent on sales.

Senator Croll: I see.

Mr. Irwin: And the Excise Tax Act imposes a sales tax of 9 per cent for a total of 12. The amended subsection (2) will impose only three-ninths of nine; that is, 3 per cent under the Excise Tax Act on these articles produced by the blind, and there will be a 3 per cent tax imposed under the Old Age

Security Act for a total of 6 per cent, which is the rate that has been imposed all along.

The Chairman: So it is only bringing your law up to date to carry out what was intended and what you are actually doing.

Mr. Irwin: That is correct, sir.

The Chairman: In the second part you are dealing with subsection (2). On top of page 3 there are further subsections.

Mr. Irwin: Subsection (3), starting at the top of page 3, is the same as the present subsection (3a). There is no change other than renumbering the sections. The present subsection (3) is deleted, and this is consequential upon an exemption provided for production machinery in clause 11 of this bill.

The amended subsection (4) starting at line 5 deletes a reference to tariff item 70500-1. This does not change the substance of the act; it is consequential upon a change in the customs tariff whereby goods that were formerly covered by tariff item 70500-1—which is the tariff item that is being deleted here—are now covered by another tariff item 70505-1, which is among the tariff items retained in the subsection.

Subsection (5) which starts at line 10 is new and it is intended to make clear that the fraction $\frac{3}{9}$ in subsection (2) and the fraction $\frac{8}{9}$ in subsection (3) apply only to the nine percentage points imposed by the Excise Tax Act, leaving the three percentage points imposed under the Old Age Security Act to be added to this to make the aggregate rate of tax. Finally, subsection (2) of clause 5 which begins at line 14 is part of the attempt to remove uncertainty about the rates of sales tax which could apply because the sales tax is imposed in part under the Excise Tax Act and in part under the Old Age Security Act.

The Chairman: This is making assurance even trebly sure.

Mr. Irwin: Yes.

Hon. Senators: Carried.

The Chairman: Clause 6.

Mr. Irwin: This amendment is contained in a new paragraph (c) to section 47A of the Excise Tax Act and it merely extends an existing exemption for building materials purchased by or on behalf of a school or university or

other educational institution to cover the situation where these materials are purchased by a provincial crown corporation which has been established for the sole purpose of providing residences for students of universities or similar educational institutions.

Senator Leonard: That again would apply under the Old Age Security Act and is just 9 per cent?

Mr. Irwin: This would apply under both acts. Actually it is 11 per cent for most building materials.

Hon. Senators: Carried.

The Chairman: Section 7.

Senator Leonard: Excuse me a moment for going back to this; why is that confined to a corporation wholly owned and controlled under the royal prerogative of the Crown? Does this mean that it applies to a building built for the crown corporation or otherwise it will not be entitled to exemption?

Mr. Irwin: The exemption arose because of a change in practice. The exemption on building materials used to construct buildings for universities has been in the law since 1963. Just recently at least one of the provinces has set up a crown corporation to build residences for universities, thereby relieving the universities of the trouble and responsibility of building these residences. It was pointed out to the Government that if the system had continued as in the past and universities had built their own residences there would be an exemption, and it seemed reasonable to the Government that if the same work was going to be done by a crown corporation with the Government acting for the universities that exemption should apply as well.

Senator Leonard: Thank you.

Senator Croll: Carried.

The Chairman: I commend to you, Mr. Irwin, that your people might have a good look at the phrasing here because it does seem to limp rather badly. If you take the introductory words to section 47A which starts off by saying "Where materials have been purchased by or on behalf—" and then you are going to start this subparagraph (c) with the words "a corporation wholly owned and controlled by Her Majesty—" and later "for the sole purpose of providing residences for students of universities—" you find the introductory words are broader than that.

Mr. Irwin: I would have to draw this to the attention of the draftsman.

The Chairman: I just call your attention to the fact that it is very loosely worded. However, we know what you are getting at. Section 7.

Mr. Irwin: This amendment would add a new section 47D to the act to provide an exemption from sales tax for purchases by hospital laundries. This is an extension of the present exemptions on purchases by hospitals. At the present time laundry work for hospitals is usually done by the hospital itself on the hospital premises, and since purchases by hospitals are exempt from sales tax, the purchases of supplies for this laundry operation are also exempt. However, some hospitals have decided it would be a more efficient operation to form a separate laundry to do the work for two, three or maybe four hospitals. This separate laundry would not in itself be a hospital. Therefore technically it could not qualify for the exemption of hospitals, so this amendment is added to extend the exemption now applying to hospital purchases to purchases by this separate entity doing laundry work for hospitals.

Senator Croll: But doing this work exclusively.

The Chairman: It must be bona fide, wholly owned directly or indirectly by one or more bona fide hospitals.

Mr. Irwin: It must be established for this sole purpose.

Hon. Senators: Carried.

The Chairman: Section 8.

Mr. Irwin: This amendment is to the section of the act which provides for appeal to the Tariff Board. It provides for two amendments which have been requested by the chairman of the board. The first amendment would delete words that have the effect of restricting the jurisdiction of the Tariff Board to cases where there have been no previous binding judicial decisions. The second amendment, or the second part of the amendment would make it clear that the board's jurisdiction is limited to a determination of the proper rate of tax.

The Chairman: Is there not a little departure in this situation? Under a tax statute a department of government is charged with

the administration and they assess the tax. Then if you contest that you have the right to go to the appeal board, for instance, or to the Tariff Board in connection with customs matters, excise or sales tax.

Now, in this case, the way I read this section, I suggest it might appear that you go to the Tariff Board in the first instance to decide what rate of tax applies. Should there not be some assessment somewhere first, before you go to the Tariff Board?

Mr. Irwin: I believe there has to be an assessment before one could go to the Tariff Board.

The Chairman: The wording is:

Where any difference arises or where any doubt exists as to whether any or what rate of tax is payable on any article under this Act, the Tariff Board constituted by the Tariff Board Act may declare...

It is rather vague and loose language to say that if you assess me in relation to some item for excise tax and I say I am wrongly assessed or the rate is too high, that is a case where doubts and differences have arisen and I would thus have the right to appeal. Or, do I have a right of appeal which exists apart from this reference to the Tariff Board, and who is authorized to make the reference—the minister or the individual, or the corporation that is affected?

Mr. Irwin: I would not attempt to interpret the meaning of these words, Mr. Chairman, certainly before a group where there are some eminent lawyers. I can only comment that the main wording of the section is not being changed. I would not like to be called upon to defend the present wording of a number of sections of this Excise Tax Act. It has grown up over the years and perhaps could stand a good examination.

The Chairman: I would suggest maybe this is one that could be put on your list for study.

Senator Cook: Would this give the taxpayer a right to determine the rate of tax before it became payable; in other words, before he manufactures or brings in the article?

The Chairman: Taxes are levied under the statute, and there are rates. This seems to say that even in spite of that:

Where any difference arises or when any doubt exists as to whether any or what rate of tax is payable...

Where would doubts arise—in the mind of the minister, if he imposes one rate and is not sure, or in the mind of the taxpayer?

Senator Cook: The manufacturer or the importer is the one who would be the most doubtful.

The Chairman: I would think it is the taxpayer. It is a pretty loose, weaving way to get at this.

Senator Leonard: Is there an appeal from this decision?

The Chairman: I do not think so.

Mr. Irwin: Yes, through the Exchequer Court. Perhaps Mr. Mills could speak to this. He is more familiar with the Tariff Board side.

Mr. A. P. Mills, Director, Excise Tax Operations, Department of National Revenue: The vast majority of appeals under this section are given rise to because of a decision of the administration of the department that a good is taxable when the taxpayer feels that it should be exempt from tax under the exempting schedule. It really does not arise too often that the rate, the 12 per cent or the 11 per cent rate, is in question. It is a question of whether the goods are taxable or not, and this gives rise to a difference which is appealable under this section of the Tariff Board by the taxpayer.

Senator Carter: Is this still tied to building materials?

Mr. Mills: It is general.

Senator Carter: A tariff rate would depend to some extent on the classification, and many of the disputes that come before the Tariff Board are as to whether it should be taxed under classification "X" or under classification "Y". Is not that so?

The Chairman: This is only dealing with the Excise Tax Act.

Senator Carter: Oh, I see.

The Chairman: I am familiar with the provisions, Mr. Mills, as you know, but the language does give me a lot of concern. It seems awfully loose, and I think it would be a good idea to have a look at it. Of course, if you start tinkering in one spot without studying many or all of the provisions, you may create as much trouble as you cure, but

I think the department should look at it. It still remains that your appeal from such a Tariff Board decision is only on a question of law, so it really would be a matter of interpretation of whatever the particular tax item is.

Mr. Mills: Yes.

Senator Croll: Mr. Chairman, in all my experience I do not know anyone who understands the act, and if we allow the confusion to continue, somehow we will get along.

The Chairman: Senator Croll, even having worked with many of these sections for many years, why, I will admit they are difficult, and yet we seem to stand back and look at them and we say "All right,..." but we do not do anything about it. That is why this time I am saying to the departmental officers, "Please have a look at it, because it is building up to a situation where if you are not going to do it, we will.

Senator Croll: I think that is fair warning.

Senator Leonard: What is the significance of deleting the words:

...and there is no previous decision upon the question by any competent tribunal binding throughout Canada...

Senator Cook: That is why I asked if you would get a ruling in advance.

Mr. Irwin: This is the first part of the amendment, and the chairman of the board made representations to the Government to the effect that the existence of these words in the present section made it difficult for them, because it was difficult to establish whether, in fact, there was a "previous decision upon the question by any competent tribunal binding throughout Canada." To follow these words it would have to be determined whether decisions concerning a particular commodity applied to a commodity that was almost the same, and the chairman felt that these words did not save the time of the board, as I believe they were intended to do.

Senator Leonard: Thank you.

The Chairman: Shall this section carry?

Hon. Senators: Carried.

The Chairman: Section 9?

Mr. Irwin: This amendment would increase the tax on cigars from 15 per cent ad valorem to 17½ per cent ad valorem.

The Chairman: Do you expect this to produce much revenue?

Senator Croll: Senator Burchill, you are the cigar smoker. Scream!

Mr. Irwin: To answer your question, it is expected to increase the revenue by between \$250,000 and, perhaps, \$500,000 a year.

The Chairman: That is a long smoke, is it not?

Hon. Senators: Carried.

The Chairman: Section 10?

Mr. Irwin: This amendment would increase the tax on cigarettes from 2½ cents for each five cigarettes to 3 cents for each five cigarettes. It would also increase the tax on manufactured tobacco from 80 cents a pound to 90 cents a pound.

The Chairman: What will the increase add to the cost of a package of cigarettes?

Mr. Irwin: Two cents on a pack of 20 cigarettes.

Senator Blois: That is, at the retail price?

Mr. Irwin: This is an additional tax that is added to the tax on that many cigarettes. The retail price would, of course, depend upon the trade.

Senator Blois: They would increase in price by probably three cents, at least.

The Chairman: The two cents would be at the manufacturers' level. If you know the retailers' mark-up you can then figure out by how much the price to the consumer will increase. It may turn out to be five cents, but I do not know. Shall section 10 carry?

Hon. Senators: Carried.

The Chairman: I would like to know how much increased revenue you expect to get out of this increased tax on cigarettes and manufactured tobacco.

Mr. Irwin: On cigarettes it will be about \$50 million in 1968-69, and on manufactured tobacco it will be about \$2 million.

The Chairman: Well, the \$50 million—that is in all, is it not? I was wondering what additional tax it would produce.

Mr. Irwin: This is the additional tax.

Senator Croll: Do you mean that the sale of cigarettes has continued to grow and grow to that extent?

Mr. Irwin: This is an increase in tax, and this assumes that there will not be a substantial drop-off in cigarette smoking in the coming year, either because of the increase in tax or for other reasons.

Senator Croll: Has there been any fall-off in previous years?

Mr. Irwin: Not in recent years, sir.

The Chairman: This looks like a fruitful source of revenue. I read somewhere recently that there is a search to find some other place from which you can obtain revenues which appear to be lost. Tobacco might be such a source.

Senator Croll: Yes, here is the place to put the tax.

The Chairman: Yes, and it would not take much.

Senator Bourget: Would the total revenue from this tax on tobacco amount to \$400 million or \$500 million.

Mr. Irwin: Well, the total excise duties on cigarettes and tobacco in 1966-67 was approximately \$196 million, and the excise tax on cigarettes, tobacco and cigars was \$248 million.

The Chairman: I think that perhaps we have put our finger on the gold mine.

Senator Paterson: How much of that was paid by women?

Mr. Irwin: I do not know, sir.

The Chairman: They do not break the statistics down to that extent, senator.

Senator Leonard: Directly and indirectly, it is all paid by men.

The Chairman: Section 11, Mr. Irwin?

Mr. Irwin: Section 11 contains a number of subsections. Subsection (1) merely adds the underlined words in line 40, so that the section includes parts for farm wagons and farm sleds.

The Chairman: And it is an exemption?

Mr. Irwin: Yes, this is an exemption. Subsection (2) is a consequential amendment. It is consequential upon the exemption for drugs. It deletes the words "other than pharmaceuticals".

The Chairman: Yes, this is where we get the substantive change in the exemption of drugs from sales tax?

Mr. Irwin: Not in this particular subsection, sir.

The Chairman: But in this section?

Mr. Irwin: In this section, yes. Subsection (3) adds the goods enumerated in the underlined tariff items in line 18. The first of these tariff items refers to specially constructed boots or appliances made to order by persons having a deformed foot or ankle. The second one refers to individual pairs of boots or shoes for defective or abnormal feet when purchased on the written order of a registered medical practitioner. It is to provide a sales tax exemption for this special footwear.

Senator Croll: I remember this question being raised in the house ten years ago. Why did it take you so long to get around to it? There were complaints about that ten years ago.

The Chairman: The wheels of the department grind slowly.

Senator Croll: Was there any real reason for that? Did you not know what would be involved?

Mr. Irwin: I cannot give a direct answer to your question, senator, but I do believe that you have put your finger on the reason when you mention the fact that other things might be involved. New exemptions always create new problems, because there will be something that is almost the same that remains taxable.

The Chairman: Subsection (4)?

Mr. Irwin: Subsection (4) will merely provide that the goods and materials used to manufacture these boots and shoes will be exempt from sales tax.

Subsection (5) would add drugs to the list of goods that are exempt from sales tax.

The Chairman: So we are now down to the exemption. Then, subsection (6)?

Mr. Irwin: This adds a new section 2a, to provide an exemption from sales tax for artificial breathing apparatus for individuals afflicted with a respiratory disorder. Some people have to have respiratory assisting devices.

The Chairman: Would this cover, for instance, an air conditioning unit?

Mr. Irwin: This would be a matter of interpreting the law, but I think not, sir.

Senator Croll: The hospitals have had that exemption all along, have they not?

Mr. Irwin: Yes, sir.

Senator Croll: And this is for the individual?

Mr. Irwin: Some individuals are able to leave hospitals with a portable breathing device. When they purchase these devices themselves this will provide an exemption for the piece of apparatus.

The Chairman: Subsection (7) is simply a repealing provision?

Mr. Irwin: The subsection being repealed refers to liver extract, and this subsection is no longer necessary because of the more general exemption for drugs.

The Chairman: Yes, and subsection (8)?

Mr. Irwin: It repeals an exemption for vaccine for use in preventing poliomyelitis. It is no longer necessary because of the more general exemption for drugs.

Subsection (9) would add radium to the list of goods which are exempt from sales tax. This is really a technical amendment. Radium, under the present act, is exempt for all its uses, and radium is used for more than medical purposes. The new exemption for drugs would exempt it when used for medical purposes, but because of the re-organization of these amendments, it is necessary to put radium back into Schedule III.

The Chairman: You put it into the schedule of exemptions?

Mr. Irwin: Yes, sir. Subsection (10), including Part XIII, which covers the next two pages, provides the exemption for production machinery used in manufacturing. It will be recalled that the budget in 1966 proposed

that the rate on production machinery be reduced to 6 per cent starting on April 1, 1967, and that these goods become fully exempt on April 1, 1968. The budget in June 1967 moved forward the date when these goods were to become fully exempt, and proposed that they be exempt starting on June 1, 1967. This amendment is intended to carry out that proposal.

The Chairman: I notice against the amendment in the list on page 8, in paragraph 3 there is a black line which rather suggests this is an addition.

Mr. Irwin: On page 8 there is an addition to the list of goods which are exempt. This new exemption refers to plans, drawings and related specifications which are used in installing machinery and in manufacturing operations.

The Chairman: That completes that section. Shall section 11 carry?

Hon. Senators: Carried.

Mr. Irwin: Section 12 repeals Schedule V, which is no longer required since all the goods it lists are included in Part XIII, Schedule III, which are to be exempt from sales tax.

Hon. Senators: Carried.

Mr. Irwin: Section 13 provides the coming into force dates for the various provisions of the bill.

The Chairman: As to drugs, it came into force when?

Mr. Irwin: On September 1, 1967.

The Chairman: Any other questions on section 13 and the coming into force clauses? Are you ready for the question?

Senator Burchill: May I ask one question before you go on. Going back to section 6, just for clarification, do I understand that a provincial crown corporation established in a province for the purpose of erecting a residence for students at a university will be refunded the tax on lumber used in the erection of that residence, whereas a residence built by the university itself is not exempt? Is that correct?

Mr. Irwin: No, sir. A residence built by the university itself would qualify and has qualified for refund of the sales tax for a number of years.

Senator Burchill: So this is just bringing a crown corporation into line?

Mr. Irwin: That is correct.

The Chairman: It is permitting the same thing to be done by a crown corporation as by the university itself.

Senator Burchill: I thought this was giving a special exemption to the crown corporation.

The Chairman: No. Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

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MAR 28 1968

UNIVERSITY OF TORONTO



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA

PROCEEDINGS

OF THE STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 27

Complete Proceedings on Bill C-197,
intituled:

"An Act to amend the Unemployment Insurance Act".

THURSDAY, MARCH 7th, 1968

WITNESSES:

Department of Labour: The Honourable John R. Nicholson, Minister.
Unemployment Insurance Commission: R. L. Beatty, Director-General.
M. C. Hay, Commissioner. J. W. Douglas, Legal Adviser.

APPENDICES:

- "A" Unemployment Insurance Coverage of Provincial Government Employees.
- "B" Active claimants by provinces—1967.
- "C" Average weekly benefit payments by provinces—1967.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Molson
Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Bedford</i>)	Grosart	Paterson
Beaubien (<i>Provencher</i>)	Haig	Pearson
Benidickson	Hayden	Pouliot
Blois	Inman	Power
Bourget	Irvine	Rattenbury
Burchill	Isnor	Roebuck
Carter	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Laird	Thorvaldson
Cook	Lang	Vaillancourt
Croll	Leonard	Vien
Dessureault	Macdonald	Walker
Everett	MacKenzie	White
Farris	Macnaughton	Willis—(49).
Fergusson	McCutcheon	
Gélinas	McDonald	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, March 6th, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator Basha, for second reading of the Bill C-197, intituled: "An Act to amend the Unemployment Insurance Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Davey, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, March 7th, 1968.
(30)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Upon motion, the Honourable Senator Leonard was elected *Acting Chairman*.

Present: The Honourable Senators Leonard (*Acting Chairman*), Carter, Cook, Croll, Everett, Fergusson, Irvine, Laird, Macdonald, McDonald, Paterson, Pouliot, Rattenbury, Roebuck and Thorvaldson. (15)

In attendance:

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel,
and Chief Clerk of Committees.

Bill C-197, "An Act to amend the Unemployment Insurance Act", was considered.

WITNESSES:

Department of Labour:

The Honourable John R. Nicholson, Minister.

Unemployment Insurance Commission:

R. L. Beatty, Director-General.

M. C. Hay, Commissioner.

J. W. Douglas, Legal Adviser.

Upon motion, *Resolved* to print as Appendices "A", "B" and "C", information to be supplied to the Clerk by the Unemployment Insurance Commission.

Upon motion, *Resolved* to report the said Bill without amendment.

At 10.25 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

THURSDAY, March 7th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-197, intituled: "An Act to amend the Unemployment Insurance Act", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THURSDAY, March 7th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-197, intituled: "An Act to amend the Unemployment Insurance Act", has in obedience to the order of reference of March 6th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Thursday, March 7, 1968.

The Standing Committee on Banking and Commerce to which was referred Bill C-197, to amend the Unemployment Insurance Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator T. D'Arcy Leonard (Acting Chairman), in the Chair.

The Acting Chairman: Honourable senators, the Senate has referred to us Bill C-197, an act to amend the Unemployment Insurance Act. This is a Government bill of some importance. Shall we have the usual order for the printing of the proceedings?

Hon. Senators: Agreed.

The Committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Acting Chairman: Honourable senators, I am very glad to welcome on your behalf the Honourable John R. Nicholson, Minister of Labour; Mr. M. C. Hay, Q.C., Commissioner, Unemployment Insurance Commission; Mr. R. L. Beatty, Director General of Operations, and Mr. J. W. Douglas, Legal Counsel for the Unemployment Insurance Commission.

Would you like to proceed in the usual way by having the minister make a statement with respect to the bill?

Hon. Senators: Agreed.

Honourable John R. Nicholson, Minister of Labour: Mr. Chairman, honourable senators, as you will see, and from the debate that took place when the bill came before you, this is a short and relatively simple bill. I may say that

I had hoped that it would be possible during this session to bring in a more comprehensive revision, but I spent several months of work with the commission and with the officials of the interdepartmental committee that was set up by the Prime Minister some months ago, and it became obvious that to bring in an official. There has been a ceiling of roughly 100 many, if not all, of the recommendations of the Gill committee, as modified by the recommendations of the interdepartmental committee, it would take at least three to six months of parliamentary time, that there is no possibility of doing this in less time than that.

On the other hand, there are certain changes that are long overdue. This act has not been amended for nine years, and a simple example is the ceiling for salaried officials. There has been a ceiling of roughly \$5,400 or \$5,450 that had been in force for the last nine years, and nine years ago the average weekly wage for Canadians was around \$70 a week. Today it is \$103. So, many people in the salaried classes who would normally be covered by unemployment insurance are excluded. There are some 400,000 who would normally be covered by unemployment insurance if the ceiling had gone up with the cost of living and the other economic changes that have taken place during the intervening eight or nine years. So, it was the feeling of the Government that we could not further delay an amendment along these lines, to raise the ceiling for salaried workers and to bring in this group of between 400,000 and 500,000 people.

Senator Roebuck: Was not the ceiling raised about nine years ago?

Hon. Mr. Nicholson: The ceiling was raised in 1959 to bring it in line with wages and the cost of living at that time.

In addition to the fact that the average earnings throughout the country at that time of \$72 or \$73 a week—and in the Atlantic

provinces and eastern Quebec it was considerably lower than that—have gone up to \$103 a week, there has been no increase in benefits. So, in fairness and in equity, an increase in benefits is overdue. Tied in with this bill, which comes in three parts, is an increase in contributions which are necessary merely to take care of the increase in benefits that will be payable if this legislation becomes law.

Senator Roebuck: Did you take into account the increase in the cost of living? It has gone up 11.4 per cent during the last two years.

Hon. Mr. Nicholson: Well, in addition to that there has been a corresponding adjustment in allowable earnings, but this has still been kept sufficiently low so that the incentive for a man to keep working rather than trying to draw the maximum unemployment insurance benefit is still there.

Those are the three principles involved in this amending bill. It is a short bill with only seven clauses.

Senator Croll: Mr. Minister, I have no complaint about this bill. I can go along with it, but what troubles me is what you have not said, namely, that since 1959 other people have been brought under the provisions of the act.

Hon. Mr. Nicholson: Not a great many.

Senator Croll: Well, it was before 1959.

Hon. Mr. Nicholson: Yes, from 1954 to 1957.

Senator Croll: It occurs to me that a very small percentage of the people you are bringing under the act now are likely to ever draw unemployment insurance.

Hon. Mr. Nicholson: They are the same categories that are covered at the present time, but they are excluded because of the ceiling.

Senator Croll: Yes, but with your increased ceiling you bring in a new group of people.

The Acting Chairman: The top of the range?

Senator Croll: Yes, and those people are not likely to benefit from the act, and that, of course, is the great complaint. What troubles me is the fact that you did not say, for instance, that everybody earning up to \$10,000 a year pays into the fund, or everybody earning up to \$12,000 a year, or whatever sum

you want to make it, pays into the fund, whether they draw benefits or not.

Hon. Mr. Nicholson: What you are talking about, senator, is universal coverage. There are many people in Canada who favour an extension of unemployment insurance to cover all classes, whether they need it or not. On the other hand, you would find that members of the armed services, civil servants, and school teachers are never likely to require unemployment insurance. School teachers form the best example I can think of. There is such a demand for school teachers in Canada today—teachers of all kinds, not just in the schools but in the technical colleges and universities—that there is very little need for them to have unemployment insurance. So, when you tend to move along the line of universality you run into that block.

The teachers say: "We are being brought in under the Canada Pension Plan. We are being brought in under medicare, and now we are being asked to contribute to an unemployment insurance scheme from which we get no benefits." That is why we have not been able to go through with the comprehensive series of amendments that we thought necessary. We have not been able to do so because there are two schools of thought in that group that you speak of.

Going back to your first question in which you said that these people would not benefit, I would say, with all due respect, senator, that that is not so. I am thinking of the people in Cape Breton. The cabinet spent a lot of time studying the problem that would have arisen had the threatened closing down of that big operation occurred. As a result of the action of the two governments, and the take-over by the Government of Nova Scotia, that operation is going to continue indefinitely, but if that had not happened those people would have been thrown out of work, and those in the salary bracket of from \$5,400 to \$7,800 a year would have had no insurance, while prior to 1959 they all would have been covered.

This bill brings in a group of people whom it was intended that the act, when it was first brought in, should cover, but who, because of the change in income levels, are now excluded.

A person who has been covered by unemployment insurance and who gets an increase in salary bringing him up over the level of \$5,400 a year, can at his option stay in, but if

a new Canadian, say, coming from Europe takes a job at \$5,500 or \$5,460 a year, he cannot get in under the unemployment insurance scheme if he wants to. That was not the intention of the act, and we want to correct it. So, there is a tremendous advantage in extending coverage to these 400,000 people.

The Acting Chairman: I am not sure whether the minister had finished his preliminary statement and was ready for questions.

Hon. Mr. Nicholson: Yes, I had.

The Acting Chairman: Then, I have Senator Rattenbury as the first on my list to ask a question, and if other senators wish to ask questions perhaps they will indicate that fact to me.

Senator Rattenbury: Mr. Chairman, I would like to ask the minister a question with reference to his statement about the average salary in Canada. He said it was \$103 a week. As he knows, I come from down east, and I should like to ask him what would be the average salary there. Would your officials have that information, Mr. Minister?

Hon. Mr. Nicholson: I would think that it would be less than \$150 a month.

Senator Rattenbury: Yes. Then, I come to the schedule in section 5 which shows that the maximum weekly benefits for a married man with a dependant is to be \$53, and he is allowed to earn \$27.00.

Hon. Mr. Nicholson: Yes.

Senator Rattenbury: This \$27 would probably result from a day and a half's work a week or, at least, not over two days' work a week. We, as employers, are finding great difficulty in getting men to work. I am in the construction business, and undoubtedly the unemployed in Saint John number in the thousands. But, if we put in a request for a dozen labourers we are darned lucky to get two or three. These provisions will aggravate that situation because the result is that a man can get \$80 a week by working only one and a half or two days a week, and that, I think, is not far off the average wage for non-skilled labour working a full week.

I realize that it is difficult to differentiate between areas of Canada, but I would like to be on the record as saying that this bill will make it more difficult for employers of unskilled labour to obtain the labour they need because the benefits are so high.

Hon. Mr. Nicholson: Surely, senator, you would not suggest that the benefits are high, because—I am a native son of New Brunswick, as you know.

Senator Rattenbury: I realize that.

Hon. Mr. Nicholson: I keep in fairly close touch with that province, or with that part of Canada. I know that a married man with a family today, whether he is living in New Brunswick or in British Columbia, is not going to get very far if he is getting a maximum of only \$53 a week.

Senator Rattenbury: But it is plus \$27.

Hon. Mr. Nicholson: And that is particularly so if he has four or five children.

Senator Rattenbury: I appreciate this.

Hon. Mr. Nicholson: And if he happens to be in the low income range the maximum weekly benefit that he gets is only \$17.00.

The Acting Chairman: Is not the benefit and also the allowable earning geared to his own earnings?

Senator Rattenbury: Yes, but the situation that arises—and it is met with every day of the week—is that they will work only so many days. Their living standard, perhaps, is unfortunately geared to a take-home pay in the bracket of \$75, \$80 or \$85 a week. The minister knows the situation we have there. They are happy if they can take home that much money.

Hon. Mr. Nicholson: Of course, they do not always qualify for the \$53. As the chairman has said, their benefits are tied in with their earnings. Those in a lower bracket get about \$29, not \$53.

Senator Carter: The group Senator Rattenbury is talking about is the group earning the benefits.

Senator Rattenbury: The highest benefit.

Senator Carter: If you called for a dozen of that group do you think you would get more than two, if there were a dozen unemployed in that group?

Senator Rattenbury: If I called up for a dozen I would be lucky to get one. We are short of technical skill.

The Acting Chairman: I think, questions should be asked through the chairman, if necessary even to Senator Rattenbury.

Senator Rattenbury: I had finished.

Senator Thorvaldson: This is probably a matter of arithmetic more than anything else. You are raising the ceiling and the new people who will come under the act under the new ceiling will all be payers.

Hon. Mr. Nicholson: That is correct, and their employers.

Senator Thorvaldson: The contributors to the fund. I was just wondering what were the objections to that. In other words, will the outgo be, as it were, self-liquidating by the premiums received, or is there a difference?

Hon. Mr. Nicholson: That has been very carefully worked out by the officials of the department and their advisors. They have had the advice of actuaries and these figures are worked out on an average unemployment level of $4\frac{1}{2}$ per cent. The Canadian average has been running at about that level for the last few months. Normally it has been considerably lower.

Senator Thorvaldson: Resulting from that, the sole reason for the increase in contribution costs results from the increase in benefits?

Hon. Mr. Nicholson: It is directly tied in. We do not expect the fund to make any money or to lose any money.

Senator Thorvaldson: I suppose that has been calculated.

Hon. Mr. Nicholson: Let me give you some figures. In 1963 the Unemployment Insurance Fund was insolvent; they had to borrow from the federal treasury in 1962 and again in 1963. As a result of the improvement in employment conditions the fund has been built up since roughly January 1, 1964, to a little over \$250 million at the end of the last fiscal year. While there has been an increase in unemployment from about $3\frac{1}{2}$ per cent to roughly $4\frac{1}{2}$ per cent of late, we expect to end this fiscal year, at the end of this month, with an increase in the fund of roughly \$50 million. It is still solvent.

Senator Thorvaldson: Do I understand that that is deemed by the authorities here to be a satisfactory level for the fund?

Hon. Mr. Nicholson: It is.

Senator Thorvaldson: The present level.

Hon. Mr. Nicholson: We would like to build it up, as was done in the period prior to the

recession in 1953. We would like to continue to build it up, but we do not build it up out of this amendment.

Senator Thorvaldson: What was the highest amount the fund ever came to, in I think about 1959?

Hon. Mr. Nicholson: Roughly a billion dollars, \$975 million.

Senator Croll: I thought it was \$990 million.

Hon. Mr. Nicholson: I think \$975 million.

Senator Thorvaldson: What year was that?

Hon. Mr. Nicholson: That was the summer of 1957. Actually the end of the fiscal year, March 31, 1957.

Senator Roebuck: It is, of course, desirable to cover as many people as possible. If we could have universal coverage it would be very nice. I was on the original committee that devised this plan and I have been interested in the subject ever since. The English act preceded ours and I remember a letter I received from a woman in England who wrote, "Our Gladys has been paying now for a long time but she aint got nothing out of it yet." That expresses something very typical in the minds of many people, which I think leads to some of the frauds perpetrated against the fund. People feel that they have paid in, they are entitled to get something out and they are going to get it in some way.

I wonder why we have never differentiated between the various groups of employers as is done in the Workmen's Compensation Act. In that act the rates are not all the same; they are gauged in accordance with the number of accidents and the cost of accidents of the type common to that employment. Why cannot we do the same here? I remember that at the time of the original committee we were discussing what groups we would take in. One group discussed were the bankers. Banks were strongly opposed to it because there was very little unemployment in banking and they did not want to contribute and get almost nothing out of it. In my own office we have contributed for the staff, the stenographers, clerks, and so on, for years, and I have never heard of any of them getting anything out of it.

Senator Croll: The pregnant ones do, don't worry about that.

Senator Roebuck: They were not made pregnant in the office. I am not saying we should not pay or that the banks should not pay, but it would meet the criticism that

"Our Gladys ain't got nothing out of it" if the price they pay were regulated in some way a little more closely to the cost.

Hon. Mr. Nicholson: I quite agree with that. That is one of the problems we have been struggling with, to my knowledge, for the last two years without finding a satisfactory answer. It is true that under present-day conditions schoolteachers, for instance, would rarely have a claim under this bill. The same is true of nurses who want to work, or laboratory technicians. However, there may come a time when conditions are different. We saw that happen when we had a depression in the thirties, when many of these people would have been glad to have been covered. I know that today it is the feeling of the Government that it would be a mistake to attempt to extend the coverage to certain classes where there is no risk. You would be collecting premiums from, say, schoolteachers with no chance of any claim being made on the fund at all, regardless of how minimal the charge might be. Then you will find the banks would come up and say, "We are almost in as good a position as school teachers". The insurance companies are the same. People who have established a seniority with the railway company are in much the same position. People who have worked for ten years with one of the big pulp and paper companies across Canada have got seniority. They say, "There is no more chance of calling on us than if we were civil servants".

It has been the most difficult question that the interdepartmental committee has had to study. They are divided right down the middle as to where they should draw the line.

The Acting Chairman: On the other hand, it might fall quite heavily on those who would need to benefit the most.

Hon. Mr. Nicholson: Exactly.

Senator Thorvaldson: Did the Gill Report make any recommendation in regard to this?

Hon. Mr. Nicholson: Yes, the Gill Report recommended almost complete universal coverage.

Senator Roebuck: Did it meet that objection you have just made?

Hon. Mr. Nicholson: No, it did not meet the objection. They did not come along with a formula to help to make it work. It is easy enough to make suggestions if you do not have to implement them.

Senator Roebuck: Yes. You do not have to be exactly just, if you are substantially just. Some of these institutions, such as banks and others which you have enumerated, where they seldom have a call, would pay a sum of money without protection, and perhaps that would help to some extent. As a matter of fact if the coverage were wider, you would find you might be able to keep up the contributions of the lower classes, even if they claim greater demands, equal with what you might do now without those people in and without any complaint from them, because the contribution could be so small. Anyway, it is worth considering.

Hon. Mr. Nicholson: If you could work a final formula along those lines which you suggest, it would be much easier to get in perhaps complete universal coverage. There will be certain classes you never are able to cover. There is the trapper, for instance. I doubt if you could cover the professional athlete, because the bonus he can get is bigger than his salary. There are these certain classes.

On the other hand, the committee is trying to cover any classes of people that are likely to need protection. We are gradually moving in that direction. For instance, when Senator Hays was Minister of Agriculture he recommended to the Government that agricultural workers be covered. That is now the law, and has been in effect since the first of April last year. We have run into hurdles there, because the people would work less than thirty or forty days for different employers. The book-keeping became too heavy and we had to amend the regulations to overcome that difficulty. There is a gradual trend to universality and to cover wider classes than were covered in the legislation introduced in 1941.

Senator Roebuck: Do you not think that if you made the system more just and not combine making the price of the insurance depend on its cost with extending the coverage, and then later gradually extend the coverage you would have very little difficulty? The principles are wrong now, because they are unjust.

Hon. Mr. Nicholson: All I can say on that, senator, is that the interdepartmental committee is alive to this situation. It is working on it. Commissioner Hay is here, he has been working actively with this committee, to my knowledge, for nearly two years now. The legal advisor, Mr. Douglas, and the Director General, Mr. Beatty, are here. I am sure your

suggestions will be kept in mind, as they continue their work.

The Acting Chairman: If I may go on and ask a question, following that of Senator Roebuck, I would ask how many are now covered by unemployment insurance and what percentage of the total number of unemployed are covered?

Hon. Mr. Nicholson: We have about 7.57 million in the work portion in Canada today. Of that, about two-thirds—about five million—are covered and there would be another 450,000 covered if this amendment becomes law.

The Acting Chairman: Probably a substantial portion of the work force is covered now.

Senator Carter: I have two simple questions, but before I come to them I would like to follow briefly on the question put by Senator Roebuck. These categories of people we have talked about, teachers, have tremendous objections to bringing them in, because they are never going to draw benefit. Yet we do have people in who are pretty close to the teacher category and in fact many of them are people with established seniority, with paper companies and so on, who will never draw benefits. In the case of that group, would it be possible to employ a principle something like the manner of life insurance, where there is a cash surrender value? He gets his protection, he pays for his protection, but over and above that, when you firm it up, he gets a little bonus back, a sort of cash surrender value, based on what he has paid in. Would there not be some way adopting that in the case of those groups?

Hon. Mr. Nicholson: I cannot answer that. Perhaps Mr. Beatty can.

Mr. R. L. Beatty, Director General, Unemployment Insurance Commission: This would mean that the cost we have to charge for the insurance would have to be higher, if we were going to pay back to everyone at the end, a cash surrender value. This could be done, but in order to have that money available to pay out, there would need to be a higher contribution for the insurance.

Senator Carter: Not for everybody, just for those who never draw at all, that particular group who never draw out of the fund. All they do is pay in. If they had even a tiny bonus they knew would be coming to them, I think they would regard it as...

Senator Roebuck: A nest egg.

Senator Carter: I think it would influence their attitude towards it.

Hon. Mr. Nicholson: The difficulty you are up against, Senator Carter, is this. It reminds me of a brief that one industry presented to the Government within the last few months, where they were dealing with unemployment insurance. They wanted to include just the bad risks in their own particular industry. The premiums would be outrageous on that particular group, if you could not spread it over the whole group.

Senator Carter: Perhaps you could have a special rate for some people who never become unemployed, if you are going to bring them in, as in the case of bank employees?

Hon. Mr. Nicholson: That is one of the reasons why, in answering a question in the Commons a few nights ago, I said quite frankly that while you can make out a good case for almost complete universality, you get large blocks of employees—civil servants, members of the armed services particularly, and school teachers, who do not need the coverage, and who object to paying it. They say "Why insure against a risk that does not exist?" This is an insurance scheme and they are objecting to it.

I know we had a very interesting debate in Kingston last summer, where we had all the senior officials of the Unemployment Insurance Commission from all parts of the country, and others interested in social security legislation. We debated this very thing and I deliberately took the position which Senator Roebuck has taken this morning, pleading for universal coverage, as a matter of debate. It appeared in the newspapers that the minister was recommending extension to school teachers and civil servants. I never even recommended such a thing. In fact, school teachers had not even been mentioned in any part of the debate.

Senator Croll: Yet, Mr. Minister, when we speak of the armed services, where you say it never happens, it did happen.

Hon. Mr. Nicholson: Yes, it did.

Senator Croll: I remember very well when school teachers gave us a very bad time, when we had the Canada Pension Plan under discussion. The chairman and co-chairman are here. The school teachers came with their briefs. Finally, we brushed it aside and said

everybody comes in. These arguments hold good at a time of need.

Hon. Mr. Nicholson: I quite agree, Senator Croll. If it had not been that people who have relatively little use for the fund have had to come in under the Canada Pension Plan, as they have to come in under Medicare all at once, it might have been easier to make the coverage more universal than it is today. But you cannot push everything in at one time. If it is going to be done, it has to be done gradually.

Senator Carter: I have two other questions. You mentioned civil servants. How many agreements have been made between the Unemployment Insurance Commission and various provinces to take care of their provincial civil servants?

Hon. Mr. Nicholson: I think Mr. Beatty should answer that question.

Mr. Beatty: In the past, if the government of a province agreed, we would insure all of its employees, those temporary or casual in nature and those permanent in nature. We have insured on the basis of making agreements with the provinces. I do not have the figures with me as to exactly how many provinces are in this category, but a number of them, I can say, have made this arrangement with the federal Government.

Senator Carter: You do not know if they all have.

Mr. Beatty: No, they have not.

Hon. Mr. Nicholson: No. I was asked that question. They have not all, but I would say the majority have.

Senator Carter: Could you say which provinces have not?

Hon. Mr. Nicholson: Mr. Beatty can get that information for you.

The Acting Chairman: Was there any one particular province you were interested in?

Senator Carter: I know a good deal about one particular province. That means the provincial servants are actually covered.

Hon. Mr. Nicholson: They can be at the option of the federal Government.

Senator Carter: What about federal civil servants?

Hon. Mr. Nicholson: They are not covered at all.

Senator Carter: Or are they included?

Mr. Beatty: Federal civil servants are covered for the first two years of their employment, or for the period that the department says is not permanent employment. At the end of that time, if the department certifies that they are permanent with the department, they are no longer covered.

Hon. Mr. Nicholson: But they get the coverage while they are earning their credits.

Senator Carter: My last question is this: the Government contributes 20 per cent of the fund.

Hon. Mr. Nicholson: That is correct.

Senator Carter: And in addition the Government finances the cost of administration.

Hon. Mr. Nicholson: It has the administration charges, yes.

Senator Carter: Can you get any figures to tell us what percentage of the fund is used up for administration? What is the administration worth in terms of percentages?

Mr. Beatty: The actual administrative costs for the year run roughly about \$43 million.

Senator Carter: Yes. Would that be 10 per cent, then, of the fund?

Mr. Beatty: The actual fund at the moment is about \$335 million, and we paid in benefit the last year—we will pay something of the order of \$300 million, and we take in something more than that.

Senator Carter: In terms of the fund, or what you take in in a year in the fund, the administrative costs would be roughly 10 per cent. Is that it? You take in roughly \$400 million.

Mr. Beatty: We have been taking in roughly \$400 million for the last few years, but we have been running administrative costs of \$43 million. So it is slightly in excess of 10 per cent.

Senator Carter: So the federal contribution is actually 30 per cent, then.

Hon. Mr. Nicholson: That is correct.

Senator Croll: There are two questions I would like to have answered. One of them

was asked in the Senate chamber by Mr. Macdonald (Cape Breton), who is here and can speak for himself. I do think the question he asked should go on record. The other question was asked by Senator Choquette, who is not here at the moment. His question was what amount did you recover from various people who had overdrawn, or for some reason were paid moneys that they should not have been paid?

Hon. Mr. Nicholson: That question was asked by Senator Choquette the other day, yes. The figure of \$1,114,000 was given. What percentage of that was recovered, Mr. Beatty?

Mr. Beatty: A very high percentage would be recovered. I do not have the actual percentage with me that was recovered, but, generally speaking, we are recovering each year about the same amount as we establish in overpayments. The actual amount of outstanding overpayments on our records at the moment is about \$300 million, and that has remained fairly constant over the last four or five years. This dates back to the year that the fund began. So this means that we are actually recovering a very high percentage. Certainly, we are recovering something in excess of 95 per cent of what is established each year.

Senator Croll: Have you any idea what that costs you?

Mr. Beatty: The actual cost would be very difficult to estimate, because it is buried in our total administration costs. For example, we use an agency known as the Retail Credit Organization, to assist us in this area, and for every dollar spent on the Retail Credit Organization we recover about eight or nine dollars. That would not represent the total cost, but it gives you the idea that our costs for recovery are less than the costs of the actual amount that we get back.

Senator Croll: You are not being unduly harsh on recoveries, are you?

Mr. Beatty: I do not think so, no.

Senator Roebuck: Are you prosecuting any cases?

Mr. Beatty: We take into consideration the situation of the person when we make arrangements to repay, and, if the person can show us that he has undue hardship, or that there are circumstances such that the person cannot make full payment, we take payment

by instalment, and this sort of thing, and we work out an equitable arrangement with the person in order to let him repay to the best of his ability.

Senator Rattenbury: These are as opposed to cases you take to court.

Mr. Beatty: That is right.

Senator Roebuck: Do you take many of them to court?

Mr. Beatty: We take a relatively small percentage to court, but where there is flagrant abuse so far as the act is concerned it is taken to court.

Hon. Mr. Nicholson: Where there is fraud, in other words.

Senator Thorvaldson: Just what type of services do you get from the retail credit company? Do you get service from them on every applicant or just on people who default, or whom you believe to have defaulted?

Mr. Beatty: We make selections depending on the circumstances of the case. We decide on the circumstances whether there would be any point in asking Retail Credit to investigate the situation. So it is only a percentage of the cases that are actually referred to Retail Credit.

Senator Thorvaldson: Those cover only the cases in which there is something wrong or in which you believe there is something wrong.

Mr. Beatty: That is right, where there is established that something is wrong.

Hon. Mr. Nicholson: As I think you all know, honourable senators, the Unemployment Insurance Commission is established by statute. There is one representative of the employers and one representative of the work force, and there is an independent chairman, the Chief Commissioner. The other two can out-vote the Chief Commissioner. They keep an eye on the situation and they exercise discretion along the lines that Senator Croll has mentioned. Mr. Hay is here this morning as the employers' representative on the board. Mr. Hay has a long background of industrial experience with one of our leading rubber companies.

The Acting Chairman: There was a question that Senator Macdonald (Cape Breton) asked in the Senate. Would you like to ask that question, and any others that you might have, senator?

Senator Macdonald (Cape Breton): I wanted to have a breakdown of the number of applicants from each province and their various categories.

Mr. Beatty: I understand the question that was referred to us was the number of claimants by provinces, broken down by the benefit levels that we pay. We are getting that information and will have it for you later on this morning.

Hon. Mr. Nicholson: I will see that you get that information, senator.

The Acting Chairman: When we receive that information perhaps it should be incorporated into the printed proceedings.

Senator Croll: Yes, in order to complete the record.

The Acting Chairman: Is it agreeable that when that information comes we put it in the record?

Hon. Senators: Agreed.

(See appendices: "A", "B", "C".)

Hon. Mr. Nicholson: We hope to have that information for you before 12.30 today.

Senator Everett: The fund is actuarially sound at $4\frac{1}{2}$ per cent unemployment rate, is it?

Hon. Mr. Nicholson: I would say so. That is the advice we received, and I know that I spent some time checking it.

Senator Everett: Does that include the 20 per cent contribution of the federal Government?

Hon. Mr. Nicholson: Yes.

Senator Everett: Does that include interest or income on the fund itself?

Hon. Mr. Nicholson: Yes. We get credit to that.

Senator Everett: Do you know what level that interest is projected on, what size of the fund?

Hon. Mr. Nicholson: It works out at 5 per cent. The Unemployment Insurance Commission would like to get more, but since the federal Government is paying 30 per cent of the costs anyway, it is not too important whether it is five or five and a half.

Senator Thorvaldson: Is there no way of eliminating that cost to the federal Government?

Hon. Mr. Nicholson: I suppose there is, if you wanted to raise the contributions of employers and employees. You could eliminate it in that way. But this fund is of great advantage to the people of Canada.

Senator Roebuck: Hear, hear.

Hon. Mr. Nicholson: When you realize that there have been well over \$5 billion distributed to the people of Canada out of this fund, you will see that that is quite an advantage. Moreover, \$3 billion of that was distributed during the periods of recession, from late 1957 to early 1962. Three billion dollars was readily available to buy food and clothing for people who needed it, and, if we had that amount of money in the Unemployment Insurance fund, it is because the federal Government contributed it.

Senator Thorvaldson: That was not the basis of my question.

Senator Everett: When you get an employment rate of 70 per cent, how long do you think this fund at its present level of \$300 million would last?

Hon. Mr. Nicholson: Well, we have had an example where the fund was at a level pretty close to \$1 billion in midsummer 1957, and within five years it had been practically exhausted. On the other hand I think it is encouraging and gratifying that since roughly January 1, 1964, we have built the fund up to where it is now over \$300 million. And then during March, which was the worst month for unemployment—the worst months are January, February and March—we still expect to end the year with over \$300 million in the fund.

Senator Croll: I remember when in the early stages of this type of legislation in Britain the British fund was at one stage £20 million down. That started in Lloyd George's day. It is a tremendous fund now, but that was the early experience of the British fund.

Hon. Mr. Nicholson: Yes, and they had these two very disastrous experiences in the pre-First World War days and then in the early 1920s. It is interesting to note that the man who introduced this legislation there was the late Sir Winston Churchill.

Senator Croll: But Lloyd George was the originator and he was advocating it.

Hon. Mr. Nicholson: But Churchill was President of the Board of Trade while Lloyd George was Minister of Labour. And it was the President of the Board of Trade who had the honour of piloting it through the house.

Senator Thorvaldson: Coming back to the deficit sustained by the fund two years ago, I take it that has been recovered.

Hon. Mr. Nicholson: I think there was \$75 million advanced from the federal treasury, \$50 million in 1962 and \$25 million in 1963. That was advanced, and that has all been recovered.

Senator Croll: It would have been a good idea to have loaned some of that to Finance Minister Sharp during the last few weeks.

Hon. Mr. Nicholson: Oh, well, he has had the benefit of that too.

Senator Roebuck: I would like to mention as a matter of interest the fact that we have

had no riots in Canada and one of the big reasons for this is the Unemployment Insurance Act. That is, supplemented by the other welfare acts in the legislation. We have received a very great benefit as a people from this type of legislation and even if it does cost the Government a little, it is certainly worth the money. I remember Mr. McLarty was Minister of Labour of Canada when the legislation was first brought in in 1941.

The Acting Chairman: Do any of the other gentlemen present wish to add anything to what the minister has said?

Thank you, Mr. Minister and gentlemen. Shall we proceed to consider the bill clause by clause?

Senator Croll: No, there is no need. I move that the bill be reported without amendment.

Senator Thorvaldson: I second the motion.

Hon. Senators: Agreed.

The committee adjourned.

APPENDIX "A"

UNEMPLOYMENT INSURANCE COVERAGE OF PROVINCIAL GOVERNMENT EMPLOYEES

The Unemployment Insurance Act does not require provincial governments to insure their employees. However it provides that any provincial government may, with the concurrence of the Unemployment Insurance Commission, consent to insure its employees.

All the provinces except Quebec have consented to insure casual and temporary

employees of at least some departments. In some instances only the employees of three or four departments are insured; in others the coverage has been applied to casual and temporary employees of nearly all departments.

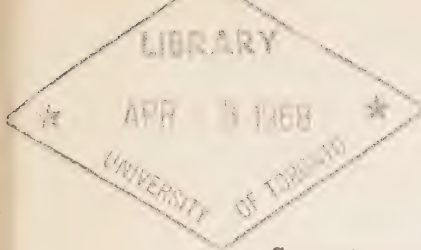
In Quebec the only provincial government agency insuring employees is the Quebec Hydro Electric Commission, it insures all its employees, whether permanent or temporary.

APPENDIX "B"
ACTIVE CLAIMANTS BY PROVINCES—1967

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Newfoundland.....	33,509	34,039	32,992	28,850	14,667	8,791	6,031	5,767	5,561	6,625	12,005	26,590
Prince Edward Island.....	6,495	6,625	6,181	5,297	1,947	930	856	757	664	701	1,023	5,036
Nova Scotia.....	34,411	34,884	34,409	30,947	14,352	10,691	9,497	9,695	8,323	8,875	13,516	23,433
New Brunswick.....	31,335	33,697	34,172	31,311	15,464	9,583	7,742	7,145	6,853	7,651	13,133	25,243
Quebec.....	154,402	165,435	172,386	158,282	106,350	80,862	77,611	72,284	70,328	80,389	114,147	160,514
Ontario.....	153,918	160,101	152,613	137,494	85,867	85,297	103,097	87,350	78,456	87,637	101,608	141,491
Manitoba.....	17,996	18,666	18,568	16,540	8,864	6,118	5,934	5,719	5,625	6,369	13,796	20,493
Saskatchewan.....	16,068	16,554	15,477	12,856	5,812	3,771	3,388	3,275	3,131	3,993	8,373	14,557
Alberta.....	21,010	21,789	20,761	19,485	12,696	8,194	7,150	7,353	6,582	8,134	13,479	20,300
British Columbia.....	62,782	60,047	56,211	51,232	34,043	28,583	24,956	27,753	25,340	32,080	44,947	63,861
CANADA.....	531,926	551,837	543,770	492,294	300,062	242,820	246,262	227,098	210,863	242,454	336,627	501,523

APPENDIX "C"
AVERAGE WEEKLY BENEFIT PAYMENTS BY PROVINCES—1967

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Newfoundland.....	27.74	26.07	26.26	26.69	26.91	26.21	24.85	24.26	24.04	24.30	24.78	26.23
Prince Edward Island.....	26.89	24.23	24.21	24.54	24.66	24.95	24.35	21.91	21.77	22.45	22.66	24.80
Nova Scotia.....	24.11	24.77	24.65	24.33	23.66	23.02	23.43	23.87	23.71	23.57	23.82	24.23
New Brunswick.....	23.54	24.59	24.84	25.33	25.23	24.01	23.65	23.15	23.13	23.33	23.93	25.21
Quebec.....	25.80	26.19	26.36	26.02	25.81	25.14	24.92	24.63	24.81	25.14	25.53	26.42
Ontario.....	25.41	25.81	25.68	25.28	24.66	24.31	24.91	24.50	24.80	25.01	25.43	25.69
Manitoba.....	28.46	25.72	25.58	25.21	24.65	22.80	22.58	22.67	22.77	23.28	24.41	26.34
Saskatchewan.....	25.46	25.72	25.63	25.45	24.91	22.86	22.86	22.40	22.66	23.05	24.11	26.27
Alberta.....	27.53	26.79	25.85	25.85	25.69	24.43	24.61	23.77	23.55	24.10	25.13	26.45
British Columbia.....	27.72	26.81	26.06	25.90	25.54	24.61	24.64	24.81	25.37	25.45	26.22	27.09
CANADA.....	25.96	25.89	25.82	25.63	25.28	24.56	24.64	24.33	24.62	24.86	25.36	26.09



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable A. H. McDonald, *Acting Chairman*

No. 28

Complete Proceedings on Bill C-202,
intituled:

"An Act to amend the National Housing Act, 1954".

THURSDAY, MARCH 14th, 1968

WITNESSES:

Central Mortgage and Housing Corporation: H. W. Hignett, President;
R. T. Adamson, Executive Director.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Molson
Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Bedford</i>)	Grosart	Paterson
Beaubien (<i>Provencher</i>)	Haig	Pearson
Benidickson	Hayden	Pouliot
Blois	Inman	Power
Bourget	Irvine	Rattenbury
Burchill	Isnor	Roebuck
Carter	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Laird	Thorvaldson
Cook	Lang	Vaillancourt
Croll	Leonard	Vien
Dessureault	Macdonald	Walker
Everett	MacKenzie	White
Farris	Macnaughton	Willis—(49).
Fergusson	McCutcheon	
Gélinas	McDonald	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 14th, 1968:

"A Message was brought from the House of Commons by their Clerk with a Bill C-202, intituled: "An Act to amend the National Housing Act, 1954", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Langlois moved, seconded by the Honourable Senator Cameron, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Cameron, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, March 14th, 1968.
(31)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 3.00 p.m.

Upon motion, the Honourable Senator McDonald was elected *Acting Chairman*.

Present: The Honourable Senators McDonald (*Acting Chairman*), Aseltine, Beaubien (*Bedford*), Benidickson, Blois, Carter, Cook, Croll, Flynn, Iman, Irvine, MacKenzie, McCutcheon, Paterson, Pearson, Power, White and Willis. (18)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.
R. J. Batt, Assistant Law Clerk and Parliamentary Counsel,
and Chief Clerk of Committees.

Bill C-202, "An Act to amend the National Housing Act, 1954", was considered.

WITNESSES:

Central Housing and Mortgage Corporation:

H. W. Hignett, President.

R. T. Adamson, Executive Director.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 3.20 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

THURSDAY, March 14th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-202, intituled: "An Act to amend the National Housing Act, 1954", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

A. H. McDONALD,
Acting Chairman.

THURSDAY, March 14th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-202, intituled: "An Act to amend the National Housing Act, 1954", has in obedience to the order of reference of March 14th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

A. H. McDONALD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Thursday, March 14, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-202, to amend the National Housing Act, 1954, met this day at 3 p.m. to give consideration to the bill.

Senator A. Hamilton McDonald (Acting Chairman) in the Chair.

The Acting Chairman: Honourable senators, we just have the one bill before us, to amend the National Housing Act, 1954. Is it your wish to have the usual motion for printing?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

We have two officials of Central Mortgage and Housing Corporation with us. Mr. Mr. Hignett is President and Mr. Adamson is the Executive-Director.

Mr. Hignett, perhaps you would like to make an opening statement with respect to this bill?

Mr. H. W. Hignett, President, Central Mortgage and Housing Corporation: Mr. Chairman, honourable senators, this is quite a simple bill.

Senator Croll: I wanted to tell you, Mr. Hignett, that we are all in favour of the bill. You can only lose it. You cannot win anything here.

Senator Beaubien (Bedford): Do not go into it too carefully, Mr. Hignett.

Senator Benidickson: Actually, the explanatory note is really very simple.

Mr. Hignett: This bill has one purpose only. The National Housing Act provides that national housing loans shall be based on 95 per cent of the first \$13,000 of lending value and 70 per cent of the amount by which the lending value exceeds \$13,000 up to a maximum N.H.A. loan of \$18,000 which is set by regulation.

The purpose of this bill is to change the loan ratio to 95 per cent of the first \$18,000 of lending value and 70 per cent thereafter. However, for the moment at least the maximum loan by regulation will remain at \$18,000.

Senator Croll: Mr. Hignett, if this bill receives Royal Assent this week, how soon will it become effective and apply to loans that are in the making at present? That is, how far can you help those who are already having loans processed?

Mr. Hignett: Well, the legislation will take effect on the opening of our offices on the following day. Since the passage of the bill in the House of Commons, in terms of our own direct lending, we have stopped processing. In fact, we were of the opinion that it would not likely be more than a week between the passing of this bill in the house and the passing of it in the Senate. At the moment, therefore, we have stopped processing loans in our own offices pending the enactment of this legislation.

In so far as the approved lenders are concerned, they will be allowed to make adjustments for loans that they have made back to October of 1967 for houses that are under construction where the final mortgage advance has not yet been made or where the house has not yet been sold, if it is being built by a builder.

Senator Croll: Very good.

The Acting Chairman: Any other questions you would like to ask?

Senator Paterson: Do you make a careful investigation of the people to whom you make loans? Do you require a reference?

Mr. Hignett: The loans made by the approved lenders, that is the life insurance companies, the trust companies and the chartered banks—so far as these are concerned we rely upon the prudence of these lending institutions to examine the credit of borrowers.

Senator Paterson: Do you think that this act will be effective in making a change? Will it spur on housing?

Mr. Hignett: It will reduce down payments by approximately \$1,250 per house and to this extent it will increase the demand.

Senator Beaubien (Bedford): How will this maximum of 95 per cent affect the overall situation? I understand you can only lend in total \$18,000.

Mr. Hignett: Yes.

Senator Beaubien (Bedford): Is there a provision in the bill that you could increase that as and when you see fit?

Mr. Hignett: The National Housing Act loan is set by regulation.

Senator Beaubien (Bedford): By order in council?

Mr. Hignett: Yes, by order in council and it can be changed at any time.

Senator Beaubien (Bedford): Well, what if a house costs more than \$18,000? What would be the situation then?

Mr. Hignett: That is why this bill provides that it will be 70 per cent of the amount by which the lending value of the house exceeds \$18,000. If the National Housing Act loan were increased to \$22,000, then you would have 95 per cent of the first \$18,000 and 70 per cent of the remaining \$4,000.

Senator Beaubien (Bedford): How does the lending value relate to the market value?

Mr. Hignett: The lending value arrived at by the C.M.H.C. is the cost value; it is not a market value. It is based on the total cost of producing the house. We keep a running costing of housing in Canada, and the basic rates for establishing lending values are changed twice a year, on the 1st of January and the 1st of July.

Senator Pearson: What is the ratio between the cost of material and the cost of labour?

Mr. Hignett: It is about 60-40, 60 per cent in materials and 40 per cent in labour.

Senator Pearson: Well, this is the same percentage as it has been, so that the labour content in a house, if anything, is declining. And this in spite of the fact that labour gets much higher wages now.

Mr. Hignett: In the last 10 years the cost of labour used in the building of a house has increased by about 70 per cent, but the actual labour cost has only gone up by 25 per cent. This has been accomplished by increased productivity and a declining labour content.

Senator White: On a house costing \$18,000, Central Mortgage and Housing will make a loan of 95 per cent?

Mr. Hignett: Yes. That is to say, for a house selling at \$18,000 or less the loan will be 95 per cent or \$17,000.

Senator White: Do you think this is a good risk?

Mr. Hignett: I think so. It adds little extra risk to the loan insurance fund. The loan insurance fund has been operating since 1954. The National Housing Act has been changed on a number of occasions, and each change has had the effect of increasing the risk on this fund but the fund has in it now more than \$200 million. It has not yet lost. There have been no losses in the fund as a result of mortgage lending under the National Housing Act, and we think the fund is quite capable of meeting this additional risk without affecting the individual premiums in any way.

Senator Pearson: There have been no individual losses in any loans?

Mr. Hignett: There have been apparent losses on acquisition resulting from foreclosure. But in the long run loans have been quite secure. There have been times when the fund has held real estate pending an improvement in the market, and after the market has improved the real estate has been sold and as a result the total surplus to the insurance fund from the selling of real estate is about \$4 million. So that rather than losing any money the fund has gained by \$4 million.

Senator Pearson: Supposing the market were to drop suddenly, would there be a chance of losing money?

Mr. Hignett: Yes, this could be, but we don't anticipate this. We believe that by 1975 the fund will be sufficiently strong to carry us through an experience similar to that of the 1930s.

Senator Carter: Are these extra loans insured or insurable?

Mr. Hignett: These higher loans, you mean?

Senator Carter: Say a person gets a loan and he suddenly dies, is there insurance to cover such a situation?

Mr. Hignett: We do not insure the borrower but all large insurance companies offer this type of declining life policy geared to suit mortgage payments. This is one thing that life insurance companies do with term policies.

Senator Carter: But you do not have insurance for this type of loan?

Mr. Hignett: No, only the loan is insured.

Senator Carter: Under this new scheme a person can build a \$30,000 home with a down payment of \$2,500, is that right?

Mr. Hignett: Under this one?

Senator Carter: Yes.

Mr. Hignett: No, sir. If it is a \$30,000 house the down payment will be \$12,900.

Senator Carter: I thought you said 95 per cent of the first \$18,000. That would come to \$17,100, would it not?

Mr. Hignett: Yes.

Senator Carter: And then 70 per cent of the remaining \$12,000?

Mr. Hignett: But at the moment the maximum N.H.A. loan is \$18,000.

Senator Carter: Oh, you still cannot go beyond the maximum?

Mr. Hignett: That is right.

Senator Croll: Your rich friends cannot participate in this yet!

The Acting Chairman: Does that \$18,000 cover the house and property it sits on, or just the home?

Mr. Hignett: The house and the property.

The Acting Chairman: The package?

Mr. Hignett: Yes, and in these days it includes all the services.

Senator Flynn: What percentage did you mention as the increase in the cost of homes in recent years—70 per cent?

Mr. Hignett: That was the increase in the cost of labour in the last 10 years.

Senator Flynn: How do you assess the increase in cost over the last five years, for instance, in building a home?

Mr. Hignett: Over the last five years the cost of housing has been rising at about 3 per cent per year, so the cost would be up about 15 per cent in the last five years, though rather lower than that in the first two years, higher in 1965 and 1966, and a drop back again in 1967. The cost of housing last year rose by about 2½ per cent, as opposed to 5 per cent in 1966.

Senator Flynn: What part of this would be attributable to the cost of land?

Mr. Hignett: In general terms across Canada, about half of it; in Ontario, rather more than that, because for a variety of reasons there is a special land problem in Ontario.

Senator Benidickson: What are those reasons?

Mr. Hignett: In Ontario, to begin with, no municipality develops land; all the land is developed by private persons. The municipalities of Ontario are not keen, as a general rule—and I am talking now of the large places, and this finds its greatest expression in metropolitan Toronto and, to some degree, here in Ottawa as well—to welcome housing, particularly if it is low-cost housing, and there have been a number of devices established in the last 10 years that are quite an effective deterrent to housing in most Ontario municipalities.

Among these are the fact that Ontario municipalities are very careful to control closely the number of subdivisions they will allow to be registered each year. This has the effect of keeping to a controlled minimum the number of lots that come on the market each year. This has some effect on their price, of course. Ontario municipalities require a level of servicing in residential subdivisions which some people think is a higher level of servicing than residential subdivisions require.

There is a technique in Ontario by which subdividers are required to pay to the municipality at the time of registration cash imposts which sometimes are as much as

\$1,000 per lot. If a house is to be acceptable in the large cities of Ontario at the moment, it must be a house that breaks even on the tax rolls. At the moment, a house with a market value of about \$27,000 does this; it is not a deficit on the tax rolls, and most communities do not welcome houses that cost less than this. They do this partly by the technique I have described, and partly by controlling very carefully the size of the lots. The 65- and 70-foot lot is the average now. They do it by zoning and stipulating the size of the house that can be built. Generally speaking, in Ontario, this means 1,100 or 1,200 square feet. All of these together impose quite a problem on the building of housing for lower income people.

Senator Flynn: Do you suggest that these requirements generally are too high?

Mr. Hignett: Well, if I were running a municipality I would not think so, but being a person entirely interested in housing, of course, I do. I have made many speeches on this subject, but having in mind the burden on municipalities, and their total financing problem, it is not surprising really that they resort to techniques of this kind.

Senator Carter: What is the average value of the houses you build under these different—

Mr. Hignett: Well, for last year, 1967, the average loan made directly by Central Mortgage and Housing Corporation was \$15,500.

Senator Benidickson: What is the total housing upon which you calculate your average?

Mr. Hignett: There were 38,000 direct loans made by Central Mortgage and Housing Corporation.

Senator MacKenzie: Mr. Chairman, I have a question. It is not really relevant to the matter under discussion, but it has to do with C.M.H.C. It is with respect to university residences. I think I know something of your present program, Mr. Hignett. We are grateful to you for providing this, but in some cases it would be very useful if you could make your services available for the renovation of existing residences rather than restricting them to new residences.

Mr. Hignett: Yes.

Senator MacKenzie: I think the same might be true of private housing as well in some cases.

Mr. Hignett: Yes. These facilities are available for private housing in one or two ways, but at the moment not for university housing. This question has been brought up by the Foundation, and there is in the works a much more substantial bill to amend the National Housing Act. It will be a quite comprehensive bill.

Senator MacKenzie: I mean, to provide the same accommodation...

Mr. Hignett: This will provide for the acquisition of existing housing and the renovation of existing residences.

Senator MacKenzie: This would be very helpful in many cases, I am sure.

Mr. Hignett: This university housing legislation has been a spectacular success.

Senator MacKenzie: I know that.

Mr. Hignett: As honourable senators may remember, the man who pressed hardest for it was Senator Wall, and in the years since it was enacted in 1961 the capacity of residences on campuses has increased from 10,000 students to 50,000 students.

The Acting Chairman: Since 1961?

Mr. Hignett: Yes, since 1961. The federal Government has invested about \$270 million in this kind of accommodation, and it seems to have turned out very well.

Senator MacKenzie: It has been most helpful and satisfactory.

Mr. Hignett: And it has since been expanded into other educational establishments which have residential requirements. We can build nurses residences, residences for interns in teaching hospitals, and even for vocational training schools.

Senator MacKenzie: Our only problem at the moment is the increase in interest rates, and the money that the students are expected to pay.

Mr. Hignett: Yes, it is getting pretty rough, is it not?

Senator MacKenzie: Yes, it is getting rough on the students.

Mr. Hignett: Yes. These loans are made at the long-term Government rate which, as you know, is the lowest rate we can achieve. Even

so, it is pretty high. At the moment it is 6½ per cent—nearly 7 per cent.

Senator Pearson: Who would provide the servicing of these residences at the universities?

Mr. Hignett: They are owned and operated by the universities.

The Acting Chairman: Are there any other questions?

Senator Croll: I move that the bill be reported without amendment.

Hon. Senators: Agreed.

The committee adjourned.



Second Session—Twenty-seventh Parliament
1967-68

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable A. H. McDONALD, *Acting Chairman*

No. 29

Complete Proceedings on Bill C-208,
intituled:
"An Act to amend the Income Tax Act"

FRIDAY, MARCH 15th, 1968

WITNESS:

Department of Finance: The Honourable Mitchell Sharp, Minister.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Gershaw	Molson
Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Bedford</i>)	Grosart	Paterson
Beaubien (<i>Provencher</i>)	Haig	Pearson
Benidickson	Hayden	Pouliot
Blois	Inman	Power
Bourget	Irvine	Rattenbury
Burchill	Isnor	Roebuck
Carter	Kinley	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Laird	Thorvaldson
Cook	Lang	Vaillancourt
Croll	Leonard	Vien
Dessureault	Macdonald	Walker
Everett	MacKenzie	White
Farris	Macnaughton	Willis—(49).
Fergusson	McCutcheon	
Gélinas	McDonald	

Ex officio members: Connolly (*Ottawa West*) and Flynn.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Friday, March 15th, 1968:

"A Message was brought from the House of Commons by their Clerk with a Bill C-208, intituled: "An Act to amend the Income Tax Act", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

FRIDAY, March 15th, 1968.

(32)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4.20 p.m.

Upon motion, the Honourable Senator McDonald was elected *Acting Chairman*.

Present: The Honourable Senators McDonald (*Acting Chairman*), Auel-tine, Blois, Burchill, Choquette, Connolly (*Ottawa West*), Cook, Fergusson, Flynn, Inman, Irvine, Laird, Lang, Macdonald, MacKennie, McCutcheon, Paterson, Pearson, Pouliot, Power and Roebuck—(21).

Present, but not of the Committee: The Honourable Senators Deschatelets and O'Leary (*Antigonish-Guysborough*).

Upon motion, *Resolved* to recommend that 200 copies in English and 300 copies in French of these proceedings be printed.

Bill C-208, "An Act to amend the Income Tax Act", was considered.

WITNESS:

Department of Finance:

The Honourable Mitchell Sharp, Minister.

Upon motion, *Resolved* to report the said Bill without amendment.

At 5.25 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

FRIDAY, March 15th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-208, intituled: "An Act to amend the Income Tax Act", reports as follows:

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

A. H. McDonald,
Acting Chairman.

FRIDAY, March 15th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-208, intituled: "An Act to amend the Income Tax Act", has in obedience to the order of reference of March 15th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

A. H. McDonald,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Friday, March 15, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-208, to amend the Income Tax Act, met this day at 4.20 p.m. to give consideration to the bill.

Senator A. Hamilton McDonald (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, can we have the usual motion to print the proceedings?

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Acting Chairman: Honourable senators, we have before us this afternoon Bill C-208, and we have as witnesses the Minister of Finance, together with Mr. Irwin and Mr. Davidson of the departments of Finance and National Revenue.

Honourable senators, I presume you would like the minister to make a general statement on the bill. Does that meet with your approval?

Hon. Senators: Agreed.

Senator McCutcheon: Would the minister also comment on the whole package, expenditure cuts and the freeze in the public service?

Senator Roebuck: All things and some others.

Hon. Mitchell Sharp, Minister of Finance and Receiver General: Thank you very much, Mr. Chairman and honourable senators. I don't think it is an exaggeration to say that this piece of legislation has had rather a chequered history but the Senate did not have to decide whether this bill differed from

the bill previously introduced. I gather this is the first time that honourable senators have seen this famous taxation legislation.

The necessity of raising some additional revenues and of bringing our accounts into balance for the coming fiscal year was first put before the house in November 1967, and the bills were not disposed of before the recess at Christmastime.

As honourable senators will recall Bill C-193 was approved in principle on second reading, and in committee, but there was an accident on third reading and the bill was voted against. I hesitate to use the word "defeated" because I am not quite sure whether that is a correct description of what happened...

Senator Flynn: And now we will never know.

Hon. Mr. Sharp: But at any rate the motion for third reading was not approved.

I felt, as Minister of Finance, and my colleagues agreed, that it was essential to take fiscal action of equivalent importance. I therefore recommended to my colleagues, and they accepted my recommendation, that taxes be substituted for those that had been contained in Bill C-193, and I also recommended that there should be a further cut in expenditures.

Senator McCutcheon: To that extent it was a good idea that the first bill was defeated.

Hon. Mr. Sharp: That is of course a matter of opinion. I preferred my first collection of measures. Briefly, Bill C-193 provided for revenues in the fiscal year 1968-69 of some \$425 million, and this bill provides for revenues of about \$390 million. But the loss of revenues will be made up by a further cut in expenditures of \$75 million, resulting in a net improvement in the overall budgetary position for the next year of some \$40 million, and if our expenditure targets are achieved and our revenues prove to be accurately fore-

cast, we will have a nominal deficit of \$40 million which to all intents and purposes represents a balanced budget.

Two items of course are not provided for in the expenditures for next year, one of them being the cost of Medicare, to the extent that it is put into effect by provinces, and the other is the handling of the Expo deficit. In regard to the latter perhaps I ought to explain that this would not require us to raise any revenues; we have already provided the money, naturally, for the carrying-out of Expo, but we have yet to dispose of the deficit which would be a matter of accounting and would not require us to raise any more revenues for that particular purpose. However, any cost of Medicare would represent a net addition to the expenditures and to our cash requirements as well.

As I have said on behalf of the Government, we will not permit our expenditures on Medicare to add to our deficit or to reduce our surplus, if we happen to have one. As you will see, this bill contains two major revenue items. First of all, a moving forward of the payment of corporation taxes for two months. The schedule for the bringing forward of those payments means that in the fiscal year 1968-69 corporations will have to pay some \$240 million over and above what they otherwise would have had to pay had there not been an accelerated schedule of payments. As anyone who is familiar with business practices will know, that payment is in addition to the outlay of corporations for the payment of tax. Indeed, there is no way by which corporations can recover that money, except to go out of business, because in the end they would have paid up their tax somewhat more rapidly, and as they went out of business they would pay it at the end. But most intend to stay in business indefinitely so, to all intents and purposes, it means a net addition to taxes payable in the year. It also means a permanent addition to Government revenues. However, this is a once-for-all operation; that two months carry forward does not produce any revenue in following years. So, it is an addition immediately in this year of \$240 million of additional revenue.

The second major proposal for the raising of revenues consists of a surcharge on taxes paid by individuals and by corporations, a surcharge equal to 3 per cent of the tax payable.

The late-lamented Bill C-193 had a rather different pattern, of a 5 per cent tax on

individual taxes, with a different floor and a different ceiling. This surtax on individuals is payable on the basic tax, about which I might answer any questions later. It is not exactly the same as the tax paid. It has a very technical meaning. The surtax is not payable on the first \$200 of basic tax. This eliminates from the burden of the surcharge some 2,400,000 taxpayers, or approximately 36 per cent of the tax-paying individuals.

The second part of the proposal is to apply a surcharge of the same amount on corporate tax payable. Both of these are to apply in respect of the two calendar years 1968 and 1969. The yield of those two taxes is \$105 million for individuals and \$45 million for corporations.

Included in this bill is a proposal that we should provide a deduction from taxable income without limit not only for gifts to the Crown in the right of Canada but also for gifts made to the Crown in the right of provinces. We had been contemplating something like this for some time, and we felt that when we had the opportunity we should introduce it now.

Perhaps the best example I could give of the desirability of doing this is the case of the McMichael collection which is located just north of Toronto, in Kleinburg, Mr. McMichael had a magnificent collection of paintings from the School of Seven—particularly Jacksons, Thompsons and so on—and he offered it to the Crown in the right of Canada, but the National Gallery was unable to accept it in its location; it had no facilities for a collection outside of Ottawa. So Mr. McMichael offered the collection to the Province of Ontario, and they accepted it. In order to deal fairly with this man who wanted to make this contribution, it was necessary to provide for some relief from taxation by way of remission, and we felt it desirable, when we could, to bring the law into line with what I think is desirable public policy, to make such donations, when made to the Crown in the right of a province, deductible from income, just as if the gift had been made to Her Majesty in the right of Canada.

Of course, as the committee knows, we do provide for the deduction of charitable donations, and have provided for the deduction of gifts in the right of provinces up to 10 per cent of the donor's income; but in the case of gifts to the Crown in the right of Canada there was no limitation. So, now we have made that rule apply to gifts to the Crown in

the right of a province, and we permit the taxpayer to deduct an amount up to the amount of his taxable income in a year, and then any carry-over into the second year. Those are the principal provisions of this bill.

There were some other provisions which were carried over from Bill C-193, but the Speaker of the House of Commons ruled that since they were identical they could not be reintroduced in this bill; but they were housekeeping matters and can easily be looked after when we bring down a regular budget in the spring. So, those particular omissions do not affect our revenues in any way, though they were desirable changes in the law.

The events of the last two or three weeks have confirmed in my mind—and, I think, in the minds of the members of the House of Commons—the necessity of following responsible fiscal policies at this time of great international disturbance. I believe that it was because the House of Commons faced up to its responsibility of approving these revenue measures, and the Government faced up to its responsibilities in further reductions in expenditures, and the other actions which were taken—particularly the removal of the restrictions on direct investment which the United States had imposed for its own balance of payments reasons, and the other measures which were taken to reinforce the resources at the disposal of the Government to defend the Canadian dollar—that it was a combination of all these things that has enabled us to weather this international storm as well as we have.

That is all I have to say, Mr. Chairman.

The Acting Chairman: That completes the minister's remarks. Are there any questions?

Senator McCutcheon: You are still going to refund the refundable taxes to the corporations?

Hon. Mr. Sharp: Yes, that was provided for in the legislation at the time.

Senator McCutcheon: But the timing is at your discretion?

Hon. Mr. Sharp: Yes, the timing was at my discretion and I said, if you remember, that I felt it was desirable to refund these amounts and not to wait until the end of the three years, because it seemed to me we were just going to be adding still further to the problems at that time, and that it was better to

bring forward the payment of corporate taxes, and thereby provide part of the resources needed for this purpose.

A suggestion has been made that we are imposing the 3 per cent surtax for the purpose of repaying the corporations the refundable tax, but what we have done is bring forward the payment of corporate taxes, and in that way the corporations themselves are financing the repayment of this tax. If we had not refunded the corporate tax the corporations might not have had sufficient funds to bring about the expansion that is desirable.

This is one of the reasons why I suggested we should pay the refundable tax now and not postpone this payment. It seemed to me that the correct combination of policies was to try to neutralize somewhat the corporation tax, or the bringing forward of the payment of corporation taxes, by providing some increase in liquidity by paying in advance the refundable tax. I thought about the other possibilities, but discarded them as being inferior from the point of view of business conditions.

Senator Flynn: May I ask the minister a question, Mr. Chairman.

The Acting Chairman: Yes.

Senator Flynn: Did I hear you correctly when I thought you said you would not let the implementation of medicare change, or add anything to, the deficit?

Hon. Mr. Sharp: Yes, the general statement I made was to the effect that the cost of medicare would be met either by an increase in taxation or by reduced expenditures. In other words, I was not going to allow the cost of medicare to impair our fiscal position.

Senator Flynn: It means that the implementation of medicare will require additional taxes?

Hon. Mr. Sharp: Yes, but just so that we see this in perspective I will say that if only Saskatchewan and British Columbia were to bring medicare into effect, or were to comply with our requirements and thus make themselves eligible for federal contributions, on July 1, 1968, the cost within the fiscal year 1968-69 will be less than \$30 million. So it is not as yet a very substantial item.

Senator McCutcheon: Do you think you can save another \$30 million?

Hon. Mr. Sharp: Well, you know, when you get to those kinds of figures you are not talking about a very large increase in taxes, nor are you talking about a very large shift in expenditures. I am not withdrawing anything I said about the Government's determination in this regard. I just thought that to put the problem in perspective I should point out that we are not talking about hundreds of millions of dollars; we are talking about relatively small amounts, providing those are the only two provinces that come in with medicare.

Senator McCutcheon: You could easily find several hundreds of millions of dollars if other provinces come in?

Hon. Mr. Sharp: You know, it has been said that I was trying to exaggerate the cost of medicare if every one of the provinces was in, but I think it will be found eventually that my estimates were quite realistic if, in fact, all the provinces do come in in that way. However, we shall see. At the moment there is no indication that they are all coming in.

Senator McCutcheon: And in that field even the most realistic estimates are usually low?

Hon. Mr. Sharp: That has been my experience too.

Senator Flynn: What do you expect to save from the decision to freeze the number of civil servants?

Hon. Mr. Sharp: We feel that if we are going to be realistic and make a further substantial decrease in the rate of increase in expenditures, we must have some very strict limitation placed upon the number of public servants, because each public servant, I think it has been estimated, adds about \$10,000 a year to the expenditures.

Senator McCutcheon: That is, on the average?

Hon. Mr. Sharp: Yes, on the average it is something of that order. It is, however, a very tough rule, and I hope the committee does not minimize the extent to which the Government has attempted to economize. It was my view that the measures we took originally were themselves of such a nature as to require a very careful use of resources to—well, let me illustrate it in this way: Our expenditures have been rising at something like 10, 11 or 12 per cent in the previous two or three years. We were planning to reduce that rate to less than 4½ per cent. Well, costs

are rising, and salaries are rising substantially. Moreover, when you look at what has happened in Ontario, where the increase in expenditures during this coming year is 21 per cent, you begin to understand just how strict has been our budgeting.

Senator McCutcheon: You begin to feel glad you are not in the field of education.

Hon. Mr. Sharp: But, we are. We are paying half of the operating costs of institutions of higher education, and this is going to squeeze us. There are many of these items of expenditure that are not within the control of the federal Government, but are within the control of the provinces, because we have agreed to open-ended commitments to pay some proportion of the cost. In the case of institutions of higher education it is not a case of matching the provinces; it is just that we are paying half of the cost of the institutions of higher education, over which we have no control.

Indeed, we switched over to that system, and away from the system of per capita grants to provinces, in order that we would participate in the rising costs of higher education. That was criticized at the time on the ground that the federal Government was going to be operating through the provinces rather than directly with the universities. I do not know whether Senator MacKenzie agreed with this or not, but my own view was that it was a more flexible method of meeting the requirements of higher education.

Senator MacKenzie: This is always assuming that the provinces give that amount of money.

Hon. Mr. Sharp: Yes, but, you know, the more they give the more we give.

Senator MacKenzie: But they do not have to give it to the universities.

Hon. Mr. Sharp: All right, but they have to give it to institutions of higher education if they are to get more of our money. I know there are arguments on both sides, but it seemed to me that this was a more flexible way of meeting these requirements, and one that we shared with other institutions—not only the provinces, but with other people who are contributing to these institutions.

Senator McCutcheon: I take it that so far as the so-called squeeze on the Public Service is concerned, it is a numbers squeeze. The num-

bers are not eroded further by deaths, resignations and retirements?

Hon. Mr. Sharp: No, this is a freeze on the total number at any time in the Public Service, and to the extent that people resign or die then there is room for new hiring.

Senator McCutcheon: Would you replace a grade one clerk with a deputy minister?

Hon. Mr. Sharp: It is theoretically possible, although it seems to me to be a waste of the deputy minister.

Senator Pearson: Can the minister tell us what effect this increase in corporate tax will have on the unemployment that we have in the country at the present time? Is this going to make the unemployment situation worse?

Hon. Mr. Sharp: This surtax is not a very heavy tax. It imposes a tax of only \$45 million on corporations. For example, it means that the rate of tax on the first \$35,000 now becomes 18.5 per cent instead of 18 per cent, and the tax of 47 per cent on income above \$35,000 becomes 48.4 per cent. This is the effective rate of tax, so it is not a very substantial increase.

Senator McCutcheon: There is always the last straw, you know.

Hon. Mr. Sharp: Yes, I recognize that, and that is why, if I may say so, I preferred my earlier version.

Senator McCutcheon: I would not object to your earlier version combined with some of the things you have mentioned since.

Senator Pearson: The answer to my question is that it will not have any effect on unemployment?

Hon. Mr. Sharp: Well, what we have here is the necessity of following policies that provide the maximum benefit, or do the least harm. There is no tax that is good or popular. It is just a question of having a tax that does the least harm and raises revenues most efficiently. I only wish there were some popular taxes and some taxes that would promote production, but I do not think there are. If you have to raise revenues you have to take the money from someone.

I believe, however, on the other hand, that we are promoting the employment of Canadians, and we are promoting stability of prices and costs by balancing our budget next year

more than we can by any other means. Indeed, if we are not successful in stabilizing the economy and in protecting the Canadian dollar it would, of course, have much more serious effects upon employment, so it seems to me that is the basis upon which one must defend these measures. They are an attempt to meet our expenditures permanently. I do not believe that is a very deflationary policy. If anything it is a neutral policy, but it is an improvement over the current year, at the beginning of which it appeared that circumstances would be different.

I may say in this connection that one of the things that interested me and, as Minister of Finance, encouraged me a little bit was the report of the Organization for Economic Co-operation and Development. This is the organization of the chief industrialized countries of the world.

Senator Connolly (Ottawa West): We spoke about that last night; not that report, but about O.E.C.D.

Hon. Mr. Sharp: Good. The members are Austria, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. This is the Organization for Economic Co-operation and Development and its chief function is to try to attain desirable growth rates. They have set targets for all these countries collectively and we try to work together to follow policies that are mutually supporting and help us to attain these goals.

In the conclusions of this report, which was published in February, these words appear at the beginning of what was said about Canada:

In the last two years, with the trend of business conditions changing quickly, the authorities have on the whole been successful in maintaining relatively high levels of employment while combatting first excesses and then mildly recessionary tendencies appearing on the demand side. Both monetary and fiscal policies have been rather promptly adjusted to changing conditions.

I know I have been criticized about changing fiscal policies, and it has been said that I did not know what I was doing. However, I have always denied that, and I must say it is some gratification to see that a neutral and

independent international agency should have felt that I was adjusting to changing conditions, as I felt we were doing.

Senator McCutcheon: You can always pick something out of the scriptures to justify your actions.

Hon. Mr. Sharp: I will read on. Verse 2:

A major and immediate problem facing the authorities in 1968 will be to achieve a better cost/price performance.

With those words I agree. That is why I feel this is a very useful report. First of all, of course, it does give some support to flexible fiscal and monetary policies, and secondly it does highlight the problem we are facing in the immediate future, which is the need to achieve a better cost/price performance.

Senator McCutcheon: Would the minister like to say something about what is popularly called a Prices Review Board? I do not know what the board will be called.

Hon. Mr. Sharp: I will say a few words about it. The Prime Minister, in the house on second reading of this bill which is now being considered in this Senate committee, gave a description of the board and also the reasons why it is being recommended. As I see the problem it is this. It is quite clear, I think, from the experience we have had collectively, the countries in O.E.C.D. and others, that we need to have some supplement to fiscal and monetary policy, and the form of that supplement I think varies with conditions in the various countries. Our characteristics are those of an open society more exposed to foreign influences than almost any other country in the world. We export more and import more per capita than any other country I know. We lie alongside the most powerful economic power in the world. Therefore, to some extent our costs and prices are determined outside the country rather than within Canada, so that the institutions which have been developed in other countries are not altogether suitable to Canada.

Moreover, in looking at the experience of other countries and looking at our own problem it seemed to us that the conventional guidelines approach which had been used in the United States and in some other countries was not likely to be acceptable in Canada. Moreover, guidelines are basically an educational influence. The success of guidelines is not to be judged on whether they are

observed but on what influence they have upon general trends. For example, the United States have had a guidelines policy in effect for a number of years and that guidelines policy was often breached. But looking at the history of that period it would appear that the fact that there were guidelines in effect did influence the nature of the wage and price decisions made in the major industries.

Senator McCutcheon: Would it be fair to say that you have changed your views on the use of what obviously would be voluntary guidelines?

Hon. Mr. Sharp: No, I have not, and I would like to go on to explain the development of my own thinking. I can speak only for myself here. I do not know the development of my colleagues' thinking in this field and I can only speak for my own thinking. I was of the view after looking at the situation that guidelines as such were not likely to work, and that was the view that the Economic Council came to also.

Senator McCutcheon: Yes, that is right.

Hon. Mr. Sharp: I should have brought along a paper I gave quite some time ago on this general subject to illustrate the way I was groping for an answer. I came to the conclusion, however, that to say that guidelines were not the answer was not satisfactory, because quite clearly fiscal and monetary policies alone are not likely to be sufficient. Therefore I was looking for some other technique for influencing the course of these major decisions, to bring to bear upon those decisions public opinion and the general interest in stability. After thinking it over I came to the conclusion that about the only effective way of doing that was not by exhortation—and I have done a bit of exhorting myself—but by being able to focus public interest on the decisions, so that what we have in mind in this board, which has not yet been named, is a body which would take an interest in all the important decisions, whether before or after, depending really upon the techniques that are developed, and to comment upon the effect of those decisions upon Canada's competitive position.

I do not believe that we can expect to do very much better than the United States, under ordinary circumstances; but our policy ought to be aimed at seeing that we do not do worse. Because, if we do, then we jeopardize

our foreign markets and we put our manufacturing industries, that are competing with imports, at a terrible disadvantage. Therefore, the general aim of our policy ought to be to keep our profits in line with those of our competitors. This is generally the framework within which these ideas have been developed.

We do not believe that there is any point, either, in the Government saying "This is the plan, we hope people will observe it and we hope it will work". The technique is to go to the trade unions, to go to the management, to the corporations and their associations, to go to the provinces, to go to all of these—perhaps to go to the consumer groups—to all of those engaged in this process, and say: "We would like to work out with you the techniques, so that you understand what we are trying to do and so that you are prepared to co-operate to the maximum in the working of these institutions."

I believe this is the best that we can hope for. No one is going to observe mere exhortation. Guidelines, if they are not observed, become worse than useless, worse than if they are positively attacked. Therefore, we must find some way of enlisting co-operation, because that is the whole purpose of the exercise. It is not to measure performance against guidelines: it is to influence decisions to the maximum in the interest of price and cost stability. This is the general idea we have developed and which lies behind the Prime Minister's statement on second reading of this bill.

Senator Roebuck: Mr. Sharp, you made a statement that you knew of no taxations that promoted production?

Hon. Mr. Sharp: Yes.

Senator Roebuck: Have you ever considered the taxation of land values? New Zealand has a general tax on land values.

Hon. Mr. Sharp: We are looking at our taxation structure generally and I would have thought that when you look at the taxation of land values you should look also at the taxation of other capital gains.

Hon. Mr. Roebuck: Capital gains?

Hon. Mr. Sharp: Yes, capital gains, because land values are just a form of that.

Senator Roebuck: I am not speaking of taxation of capital gains: I am speaking of tax-

ation of land values as such. New Zealand levies a percentage—I forget the amount now—on land values as such, assessed on the value of the land, like the municipalities.

Hon. Mr. Sharp: Oh no, we have never thought of taxing property.

Senator Roebuck: Section 92 covers any form of taxation, in other words.

Hon. Mr. Sharp: We have always considered that the taxation of land was one of the major sources of revenues of the municipalities and the provinces. We never thought that the Federal Government should move into that field. I agree with you that we have plenary powers of taxation, but we have never considered that—at least, I have never considered it.

Senator MacKenzie: Just for the record, I did not want the minister to feel that I am directing criticism at the generosity of the Federal Government in respect of aid to universities or higher education. What I had in mind was the control of the Federal Government contribution. As an illustration, if you have in a province a \$20 million operating cost on higher education, \$10 million of that will be provided to the schools by the Federal Government paying it to the province; but the other \$10 million might be made up of \$5 million from the province and \$5 million from the universities. In equity, as it were, to the institution, the provincial government should put up \$10 million against the federal \$10 million and not use it for hydro or something else, as they are entitled to do under the present legislation.

While I do not want to point fingers, I know some of the universities across the country are convinced that this kind of situation has arisen and that they are not getting the full amount which it was expected they would get.

The other point, sir, which concerns me is the very great cost of capital necessary to take care of those buildings required on account of the increased registration of students.

This is a major problem in certain provinces, I know, but I did not want the minister to go away with the feeling that there was a criticism, from me at least, about the generosity, if you like, of the Federal Government in Ottawa, but it was easier for the universities to deal with the matter when the moneys

came to them directly rather than through another channel.

Hon. Mr. Sharp: Thank you very much. The only reason I referred to you, senator, was because I knew of your previous association with universities. I was not in any way suggesting that you were opposed to this. As you know, sir, when we paid the grands directly to the universities, or almost directly to the universities, there was temptation on the other side for the province to say "We will find out first what the Federal Government will give and then we will make up the balance."

Senator MacKenzie: I know that.

Senator Pouliot: I have one question. In connection with this subject of the subsidies that are paid to the university, I have never understood how it is that the constitution says that education is an exclusive right of the provinces, yet the Government of Canada pays subsidies for education, to the provinces. I find it strange. At first, the university depended on the generosity of rich wealthy friends. Then there were contributions from the provincial government, and then there came contributions from the Federal Government. Then the sky was the limit, the universities never had enough. When they come to beg for money, they do not speak of the constitution at all; but if you want to have a look at their expenditures, they use the constitution as a shield to protect themselves. The extravagance of the universities in the building of expensive schools and so on has been noticed by Mr. Johnson, the Premier of Quebec. He spoke of the extravagance of schools, "We give them money to help them and they build palaces." They have the most expensive furniture that man could imagine. All that is supposed to be for education. I have a great deal of sympathy for you, but I would like to have some order in the whole business. I would like the provinces to be responsible for the expenditures they make and that Ottawa would be relieved from that burden. My intentions are pure.

Senator Lang: Mr. Minister, in the chamber this evening Senator McCutcheon, referring to the 3 per cent surcharge on individual incomes, suggested that the bulk of that imposition would fall on those whose taxable incomes were from \$1,600 to \$10,000 approximately, which I presume would include a lot of hourly paid workers and so on, and that, to the extent of that imposition, its main

effect would be inflationary. In other words, it would lead to a demand for higher wages to compensate for the tax imposed.

Would you care to comment on that? It seems to me to be not without merit.

Hon. Mr. Sharp: Yes. Mr. Chairman, just to give an illustration, may I take a married taxpayer with two dependents who is earning \$10,000 a year. I suppose nowadays these are highly paid workers. We could take one earning \$7,000 a year, but take \$10,000. The surtax adds \$36 a year to his tax. I have not heard of any suggestion that the increase in wages should be as little as that.

The Acting Chairman: As a matter of interest, Mr. Minister, what does it add to the \$7,000?

Hon. Mr. Sharp: To the \$7,000 it adds \$14 a year. I do not think this can be used as a very strong basis for a wage claim. That is why I do not believe it is very important in this respect.

The \$7,000 a year man pays \$828 of tax now, before the surtax. Afterwards he will pay an additional \$14. So the surtax is not going to be used as the basis for a wage increase, because a man who is earning \$7,000 a year is likely to be asking for a great deal more than that, whether there is any surtax or not.

Senator Lang: Mr. Minister, the eye is very much on the take-home pay. This amounts to a reduction in take-home pay in their eyes rather than an imposition of a tax on the income they receive. To that extent its effect on them is magnified out of proportion to the amount of money involved.

Hon. Mr. Sharp: A man earning \$7,000 a year with two children pays another \$1 a month. I have heard this argument, and it can only be seen in its true proportions by looking at the figures. Theoretically there is an argument, but a surtax of this amount does not add significantly. It does not add as much as a change in the price of gasoline occurring for some other reason than taxation or as much as any other minor changes. Fourteen dollars a year for a man who has \$7,000 income changes his income by some very, very small fraction of less than one per cent.

The Acting Chairman: Senator Cook, did you have a question?

Senator Crook: I was going to move that no further questions be asked and that the bill be reported without amendment. That is all.

The Acting Chairman: Is it agreed?

Some Hon. Senators: Agreed.

Senator Macdonald (Cape Breton): On division.

Senator Pouliot: Mr. Sharp, would it be possible to have a calculation showing the total amounts paid for education by the Government of Canada. I would like to have the

total amount for each year for the last ten years.

Could you give me that information?

Hon. Mr. Sharp: If Senator Pouliot would like to drop me a note, Mr. Chairman, I am sure I could get the material together for him very quickly.

Senator Pouliot: Thank you.

The Acting Chairman: Thank you, Mr. Minister. If that is all, we will adjourn.

The committee adjourned.

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